

Exhibit E Additional Provisions

In the event a conflict between the provisions of Exhibit C or Exhibit D(F) and Exhibit E, Additional Provisions, the provisions of Exhibit E, Additional Provisions shall govern.

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1. Additional Incorporated Exhibits

For purposes of this Provision, Additional Incorporated Exhibits, in the event there are inconsistencies or ambiguities between the Contractor's Narrative Technical Proposal or Cost Proposal, and the Contract, or if the Narrative Technical Proposal or Cost Proposal does not address Contract Requirements, the Contract will govern the Contractor's Narrative Technical Proposal or Cost Proposal. Only in those instances where the Narrative Technical Proposal has offered to meet more stringent requirements than those required in the Contract and the Department has indicated, in writing, its approval of the more stringent requirements, shall the Narrative Technical Proposal prevail.

A. The following additional exhibits are attached, incorporated herein, and made a part hereof by this reference:

- | | | |
|--------------|------------------------|-----------|
| 1) Exhibit J | Personnel Requirements | ___ pages |
| 2) Exhibit K | Glossary | ___ pages |
| 3) Exhibit L | Gap Analysis | ___ pages |

B. The following documents are not attached, but are incorporated herein and made a part hereof by this reference. DHCS shall provide the Contractor with copies of said documents under separate cover. DHCS will maintain on file, all documents referenced herein.

- 1) Certification of Receipt by Contractor
- 2) The Contractor's Narrative Technical Proposal
- 3) The Contractor's Cost Proposal

C. Unless otherwise stated, all Provisions of this Exhibit apply to the Contract as a whole, including but not limited to Takeover; Transition Periods; Legacy Operations; Design, Development and Implementation; Replacement Operations; Change Requirements; Optional Contractual Services; Enhancements; and Turnover.

D. In the event of a conflict between the provisions of Exhibit C or Exhibit D(F) and Exhibit E the provisions of Exhibit E, Additional Provisions shall govern.

2. Access Requirements

A. State's Right to Monitor

The State shall have the right to monitor all aspects of the Contractor's performance of the Contract.

Wherever a duty of access is imposed on the Contractor or its subcontractors in the Contract, the Contractor shall have a duty to cooperate, which shall not be withheld, with DHCS staff, authorized State and/or federal representatives, or the Contracting Officer's designees.

B. Access to Premises

To assure compliance with the Contract and for any other reasonable purpose, the State and its authorized representatives and designees, as authorized by the Contracting Officer, shall at all times have the right of access, with or without notice to the Contractor, to the Contractor's, or its parent corporation's, premises. Such premises shall include the CA-MMIS operations site or such other place where duties under the Contract are being performed, including the Contractor's Data Center, to inspect, monitor, or otherwise evaluate the work performed or being performed therein, or to elicit information concerning the operation of the CA-MMIS or any related work.

- 1) Badge requests for State and federal personnel shall be honored promptly by the Contractor with temporary badges provided upon request. Permanent badges, including picture badges, must be supplied in five (5) State work days, as authorized by the Contracting Officer. The Contractor shall provide a badge system consisting of:
 - a. A badge requiring an escort;
 - b. A badge requiring no escort for all secured areas; or
 - c. Such other security identification as may be approved by the Contracting Officer.
- 2) The Contracting Officer shall designate which State and federal staff shall have each category of badge.
- 3) All security areas shall be accessible to staff designated by the Contracting Officer. For any instances of access in any area by the State, the Contractor shall provide, and shall require any subcontractor to provide, all reasonable facilities, cooperation and assistance to such State representatives in the performance of their duties. All such instances of access shall be undertaken in such a manner as will not unduly delay work. The right of access referred to herein shall include on-site visits by authorized designees of the State, including potential Proposers for the purpose of procurement of a successor Contractor.
- 4) If the above-stated Contracting Officer's authorized designees include the Contractor's competitors during the procurement of the Contract, the Contracting Officer will give the Contractor at least two (2) State work days' notice prior to the visit. If the above-stated Contracting Officer's authorized designees include the Contractor's successor, DHCS will attempt to give twenty-four (24) hour prior notification to the Contractor. Should circumstances not permit such twenty-four (24) hour prior notification, the Contractor, upon proper identification of the authorized designees of the Contracting Officer, shall make required escorted access immediately available. This provision shall continue through contract transition. Such access shall be for the purpose of facilitating required Takeover activities.

- 5) The subsequent Contractor's designated staff shall be issued visitor badges which require that the staff be escorted at all times within the Contractor's facilities, except when in Department/State locations, or any cost reimbursed locations on the Contractor's premises. Badging and escorting responsibilities of the Contractor shall not be unduly withheld or delayed. Such access will not interfere with the Contractor's ongoing operations. During the period of time access is allowed to the subsequent Contractor, should any dispute between the Contractor and the subsequent Contractor arise as to any issue concerning this access, either party may request the assistance of the Contracting Officer. A mutually agreeable resolution will be sought between the Contractor, the subsequent Contractor and the Contracting Officer. If a mutually agreeable resolution is not reached within five (5) State work days, the Contracting Officer shall make a final decision, subject to Additional Provision 27, Disputes and Appeals, of the Contract.
- 6) Department of Health and Human Services (DHHS), the Centers for Medicare and Medicaid Services (CMS) and General Accounting Office (GAO) officials and other authorized DHCS and/or federal personnel shall have the right to independent access to Contractor's premises upon the Contracting Officer providing the Contractor a list of persons named by DHHS, CMS, GAO or other DHCS and/or federal agencies as authorized to enter all Contractor premises engaged in Contract activities, upon a showing of valid credentials to the Contractor. The Contractor shall permit access to premises according to such a list, which the Contracting Officer shall keep current.

C. Access to CA-MMIS Information

- 1) The Contractor shall provide on-line, read-only access to the entire CA-MMIS libraries to authorized State and federal representatives.
- 2) Documentation for the CA-MMIS shall be maintained separately, including, but not limited to, program documentation and procedures when staff, resources, facilities, and/or equipment are shared with other accounts of the Contractor.
- 3) The Contractor shall provide immediate access to State and CMS personnel upon written and/or oral (subsequently followed in writing) demand of the Contracting Officer, or his/her designee, for examination and review of items

such as, but not limited to, the following: all libraries and titles pertaining to the CA-MMIS maintained on magnetic or electronic storage media; program listings; computer logs; data element dictionaries; procedure manuals; narratives; specifications; report libraries; or any other material as described in the RFP, including program documentation and claims payment records required for DHCS's on-site monitoring, in a form and manner specified by DHCS.

- 4) The Contractor shall maintain a library containing all updated procedure manuals and information related to Operational Instruction Letters (OILs) and System Development Notices (SDNs) that shall be immediately accessible to DHCS and CMS staff. Also, the Contractor shall provide access to the Contractor's internal reports and to its employees with knowledge of documentation, program specification, or manual processes.
- 5) During the Turnover Phase of the Contract and based on the deliverables, milestones and dates contained in the Department approved Turnover Project Plan, the Contractor shall provide a subsequent Contractor with access for examination, review, and/or duplication of materials, to all libraries and titles pertaining to the CA-MMIS which are contained in procedure manuals, program listings, narratives, configuration parameters, or specifications. Also, the Contractor shall provide access to its employees with knowledge of documentation, program specification, or manual processes. Such access will not interfere with the Contractor's ongoing operations.

3. Accounting Requirements

The Contractor shall establish accounting policies, processes and procedures; maintain records; and supply reports as specified throughout the Contract and as requested by DHCS. Accounting policies and practices shall be in accordance with Generally Accepted Accounting Principles (GAAP), CMS federal accounting regulations, and the State Administrative Manual (SAM). The Contractor shall be responsible for establishing and maintaining additional accounting policies, processes, procedures, and records as required to control and document its fiscal activities. These accounting processes and procedures shall remain the same for the entire Contract period, unless prior written approval of changes is received from the Contracting Officer.

DHCS encourages the Contractor to employ new technology whenever possible utilizing best-practice characteristics in order to provide an efficient, streamlined accounting/document processing solution versus manual processes.

A. Accounting Process and Procedure Inclusions

The accounting policies, processes, procedures, and records shall classify expenses by the contractual areas defined in Exhibit B, Attachment I, Special Payment Provisions, Section 1. Each of these major classifications of expenses will be further broken down to include, but not be limited to, the following:

- 1) A definition of accounting relationships with other government contracts, related business organizations, and subcontractors;
- 2) Personnel time reporting;
- 3) Travel Expense Reporting;
- 4) Ordering and paying for goods and services;

- 5) Cost accounting in conformance with Title 48, Code of Federal Regulations, Part 31;
- 6) Allocation of expenses not totally dedicated to this Contract;
- 7) Accounting ledgers; and/or
- 8) Allocation (internal and external) methodologies for cost reimbursement.

Note: Title 48, Code of Federal Regulations, Part 31 applies to all areas of the Contract to include the Escrow Bid Documents that support the Cost Proposals.

DHCS reiterates that all prices contained in the Cost Proposals are fixed and are not negotiable. However, unforeseen circumstances, such as changes in law or policy, may warrant the need to negotiate change orders and/or contract amendments.

B. Accounting Records Supplied to the State

1. Specific accounting records and practices shall be subject to federal and State acceptance. The Contractor shall supply to the State fiscal records and records of Contract expenses. These records shall include, but not be limited to, the following information:
 - a. The Contract accounts receivable and accounts payable items on the balance sheet disclosing transactions with related organizations as defined in the Provider Reimbursement Manual, H.I.M.-15. In addition, a list detailing all debtors and creditors with their outstanding balances shall be included with the financial statements. Balance sheets shall be submitted to DHCS quarterly, or as defined by DHCS.
 - b. The statement of changes in financial position disclosing all significant transactions affecting the Contractor's financial position during the year.
 - c. Inventories of all fixed assets and equipment, in accordance with Additional Provision 35, Inventory and Treatment of Department Property, and under the cost reimbursement provisions of the Contract, at the start of Operations and at the end of each operational phase, as required in Exhibit A, Attachment 1, Takeover.
 - d. A summary of total operating revenue by source.
 - e. All requirements listed in Additional Provision 30, Financial Reporting Requirements.
2. Invoices to DHCS

The Contractor shall submit separate invoices to DHCS. The invoicing procedure shall be as described in Exhibit B, Attachment I, Special Payment

Provisions, Invoicing. All invoices shall be sent to the Contracting Officer, or his/her designee.

3. Accounting Ledgers

- a. The Contractor shall maintain separate sets of accounting ledgers exclusively for the Contract, and in connection therewith identify, collect and separate costs by the Contract areas as listed in Exhibit B, Attachment I, Section A-1 Special Payment Provisions, Introduction:

The Contractor will provide DHCS online, real-time database access of these accounting ledgers via desktop computer to DHCS staff required to have access to these records. The site where the desktop computers will be available to access these accounting ledgers will be determined by DHCS.

- b. Separate records must be maintained for postage incurred for items included on the list below and others as defined by DHCS: in Exhibit B, Attachment I, Special Payment Provisions, Cost Reimbursement section of this Contract. Separate records must be maintained for postage costs incurred for items included on the list below and others as defined by DHCS:

- 1) Claim Forms;
- 2) Mailing of provider manuals and updates;
- 3) Resubmission Turnaround Documents (RTDs) returned to the provider;
- 4) Zip Sort, or other cost reducing method, if applicable;
- 5) Notices of Authorization sent to providers;
- 6) Claim Inquiry Forms (CIFS);
- 7) Responses to CIFS;
- 8) Provider bulletins; and
- 9) Miscellaneous mailings (provider inquiry responses, etc.).

C. Estimated Expenses

At the Contracting Officer's request, the Contractor shall submit to DHCS a projected statement of total expenses associated with the Contract for each State fiscal year broken down by the contractual areas defined in Exhibit B, Attachment I, Special Payment Provisions, nine (9) months prior to the beginning of each State fiscal year. A revised estimate shall be furnished four (4) months prior to the beginning of each fiscal year. The projected expenses shall be delineated as follows:

1) Staff expenses

- a. Individual projections shall be made for each contractual area defined in Exhibit B, Attachment I, Special Payment Provisions, section 1. Such projections shall include numbers of staff by classification.
- b. Separate projections shall be made for each subcontract.

2) All other expenses

- a. Separate projections shall be made for all other major categories of expenses as listed in the Cost Exhibits or defined by the State during the life of the Contract.
- b. Separate projections shall be made for each subcontract.

D. Actual Expenses

At the Contracting Officer's request, the Contractor shall submit quarterly fiscal progress reports comparing the actual expenses to estimated expenses for the contractual areas defined in Exhibit B, Attachment I, Special Payment Provisions, Section 1, including all items specified in the projected statement of expenses. The report will indicate, for each category:

- 1) Current quarterly estimated and actual expenditures;
- 2) Year-to-date estimated and actual expenditure; and
- 3) Life (beginning of Contract to specified date) estimated and actual expenditures.
- 4) Financial Management Manual

The Contractor shall maintain and update, as necessary, a financial management manual during the life of the Contract which includes:

- a. All the data specified in the CA-MMIS Financial Management Manual, available during the procurement of the Contract in a SharePoint folder in the Data Library; and
- b. All requirements specified in Exhibit A, Attachment I, Takeover.

4. Affiliates

For purposes of this Provision, business concerns are affiliates of each other when, either directly or indirectly, (1) one concern controls or has the power to control the other; (2) a third party controls or has the power to control both; or, (3) senior management, as defined in Exhibit J , Staffing, has the power to control both.

Information regarding affiliates of the Contractor as defined above shall be submitted to the Contracting Officer as part of their Narrative Technical Proposal and no less often

thereafter than annually, at the end of each State fiscal year, unless a change to previously submitted information occurs; in which case the Contractor shall have ten (10) calendar days from the date of the change to notify the Contracting Officer in writing. The information submitted shall include (1) the names and addresses of all affiliates of the Contractor; and (2) the names and addresses of all persons and concerns exercising control or ownership over the Contractor, or over any or all of its affiliates, and the nature of the control exerted by those persons and/or concerns, and whether they exercise such control or ownership as common officers, directors, stockholders holding controlling interest, or in some other controlling capacity.

5. Amendment Process

Should either party, during the life of this Contract, desire a change or amendment to the terms of this Contract, such changes or amendments shall be proposed in writing to the other party, who will respond in writing as to whether the proposed changes/amendments are accepted or rejected. If accepted and after negotiations are concluded, the agreed upon changes shall be made through the State's official Contract amendment process, unless otherwise stipulated within this Contract. No amendment will be considered binding on either party until it is formally approved by both parties and the California Department of General Services (DGS), if DGS approval is required.

6. Annual Customer Service Satisfaction Survey

The Contractor shall solicit, through the bid process and subject to DHCS approval, an independent third party to conduct a Customer Service Satisfaction Survey. The Contractor shall begin the bid process six (6) months after the first day of Takeover. The Customer Service Satisfaction Survey shall be conducted twelve (12) months from the assumption of operations and be repeated annually thereafter throughout the life of the Contract.

The results, findings, and recommendations of the annual surveys shall be reported to DHCS beginning on the first anniversary date of the assumption of operations and continuing on each subsequent anniversary date of the assumption of operations, throughout the life of the Contract.

It is the intent of DHCS to use these findings to help identify the ever-changing needs of providers and adapt customer services accordingly, and to evaluate the effectiveness of provider services performed by the Contractor. The Contractor shall submit to DHCS for approval a bid proposal that will outline the scope of the survey (e.g., survey methodologies, sampling size and type, activity locations, etc.). Upon DHCS' written approval of the Contractor's bid proposal, the Contractor shall solicit through the bid process an independent subcontractor to fulfill the following requirements:

- A. The independent survey will include a comprehensive sampling of all customers serviced by the Contractor. The purpose of the survey is to determine the effectiveness of the Provider Relations (PR) Organization activities. Further, a survey results report will require recommendations for improvement to any and all PRO activities.
- B. This survey will include all services offered by the Contractor unless otherwise stipulated by the Contracting Officer.

- C. The actual scope of work in the above bid proposal will be determined by DHCS in writing prior to advertisement of the bid, and will clearly define goals and objectives in addition to bid requirements.
- D. DHCS shall receive copies, concurrent with the Contractor, of any and all survey findings and recommendations.
- E. DHCS shall receive a written report from the Contractor attesting to the findings and suggested recommendations of the Annual Customer Service Satisfaction Survey. This report will include acknowledgment of the survey findings and suggested recommendations for incorporation of the performance improvements or enhancements into the PRO activities, when applicable.

These services will be cost reimbursed by DHCS in accordance with Exhibit B, Attachment 1, Special Payment Provisions, Cost Reimbursement.

7. Application to Parent Entities and Corporations and Subcontractors

The application of access, audit and accounting requirements in the RFP to any parent entities and corporation(s) and subcontractors is set forth below.

A. Application to Parent Entities and Corporations

The Contractor shall be responsible for ensuring that the provisions of this exhibit shall apply to any parent entity/entities or corporation(s) which provide(s) funds or services to the Contractor to meet its obligations under the Contract or whose resources are utilized by the Contractor to meet the minimum financial criteria in Additional Provision 30, Financial Reporting Requirements.

B. Application to Subcontractors

The Contractor shall include the provisions of all applicable sections contained in Exhibit D(F), Special Terms and Conditions and this exhibit in all subcontracts under the Contract.

8. Assignments

The Contractor shall not assign the Contract in whole or in part or any payment arising therefrom without the prior written approval of DHCS. It is the policy of DHCS to withhold consent from proposed assignments, subcontracts, or novations when such transfer of responsibility would operate to decrease DHCS likelihood of receiving sufficient performance under the Contract.

DHCS will consider the granting of assignments for financial purposes, such as the payment of rent and other charges to third parties, provided that the original Contractor retains all of its responsibilities and obligations under the Contract. Accordingly, DHCS agrees that it will not unreasonably withhold approval where (1) a requested assignment is only of the right to receive payments, and (2) none of the Contractor's duties, responsibilities, and obligations under the Contract are affected by the assignment.

All DHCS-approved subcontracts to the prime Contract shall contain a provision holding that further assignments shall not be made to any third or subsequent subcontractor without additional written consent from DHCS.

9. Audit Requirements

A. General

- 1) The Contractor shall maintain current books of account, records, documents, and other evidence pertaining to its managerial, financial, and operational policies, procedures, functions, and processes.
- 2) All records, books of account, papers, and supporting documents of the Contractor, any affiliates or parent entities or corporations which may allocate or share expenses or assist or provide for the Contractor's meeting Minimum Financial Criteria (See Exhibit E, Additional Provision 41, Minimum Financial Criteria), or any subcontractor providing services to the Contractor shall be open to inspection during normal business hours by DHCS, its authorized representatives, or by other State or federal agencies with statutory or regulatory audit authority.
- 3) The books of account, records, documents, and other evidence pertaining to the Contractor's managerial, financial, and operational policies, procedures, functions, and processes shall not be removed from the State of California without prior written consent of the Contracting Officer.
- 4) All records, books of account, papers and supporting documents of the Contractor, any affiliates or parent entities or corporations shall be available for review within five (5) calendar days of request or as authorized by the Contracting Officer..
- 5) DHCS may, upon reasonable notice, require that such, books of account, records, documents, and other evidence and papers, or a specified portion thereof, that exist outside the State of California be made available for examination in this State or that with a certification statement, a true and accurate copy of such, books of account, records, documents and other evidence and papers, or a specified portion thereof, be furnished to DHCS within five calendar days of receipt of request.
- 6) The Contractor's accounting procedures and practices shall conform to Generally Accepted Accounting Principles (GAAP). Costs applicable to the Contract shall be separately identifiable and readily ascertainable there from. Revenue and expense records pertaining to the contract shall be in sufficient detail to readily identify revenue source and all direct and indirect costs under the provisions of the Contract.
- 7) All books of account, records, documents and other evidence shall be maintained separately for the CA-MMIS.
- 8) The requirements of Title 48, Code of Federal Regulations, Part 31, Contract Cost Principles and Procedures, shall be applied in determining the allowable

direct costs incurred by the Contractor for cost reimbursable work performed on the Contract or work ordered by a change order or Amendment.

- 9) This Provision shall be incorporated in any subcontract of ten thousand dollars (\$10,000) or more. It shall also be incorporated in all subcontracts entered into with one entity or affiliate where the total dollar value of all of that entity's or affiliate's subcontracts exceeds ten thousand dollars (\$10,000).
- 10) If a parent entity or corporation(s) is utilized by the Contractor in meeting Additional Provision 41, Minimum Financial Criteria, the above provisions shall be applicable to that parent entity or corporation(s) as well.
- 11) The Contractor shall promptly notify the Contracting Officer in writing of any request for access to any CA-MMIS records by any governmental agency.
- 12) The Contractor will be provided an entrance and exit conference as part of the audit process, in which the Contractor will be allowed to comment on the audit report and findings.

B. Audit of Electronic Data Processing Application Systems

DHCS will procure an audit contractor annually to perform an electronic data processing (EDP) audit. The Contract shall be with an independent Certified Public Accounting (CPA) firm, subject to DHCS approval, which has experience in conducting electronic data processing audits in accordance with auditing standards provided by the American Institute of Certified Public Accountants for applications comparable with the scope of this CA-MMIS application. The Contract shall require the CPA firm to perform an electronic data processing audit of general and application controls on the CA-MMIS and the Contractor's quality control and project management efforts. DHCS may directly Contract with a CPA firm or require the Contractor to Contract with a CPA firm approved by DHCS.

- 1) The audit will include a number of processing functions. The Contracting Officer will specify the scope of the functions to be audited which will include auditing source documents used to support invoicing. The audit will report control weaknesses and the effects to their respective functions. An audit shall be conducted six (6) months from the assumption of operations and at twelve- (12) month intervals thereafter. The CPA firm shall deliver to the Contractor and to DHCS a report of findings and recommendations within three (3) months of the close of each review period. The audit shall be conducted in accordance with generally accepted auditing standards for electronic data processing application reviews and shall conform to the Codification of Statements of Auditing Standards Number 70 (SAS70), AU Section 324, numbers 1-93, as amended. The audit report shall be in accordance with AU 324.24(b).
- 2) DHCS will use the findings and recommendations of each such report as part of its ongoing CA-MMIS monitoring process. The CPA firm shall be required to abide by the security and confidentiality requirements of the Contract as these relate to the protection of data, material and information received as a result of these audits from unauthorized disclosure to any third party without the prior written approval of the Contracting Officer.

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- 3) The scope of the EDP audit, as defined by the Contracting Officer, will be to test services provided to the State for compliance with Contract requirements and may include, but not be limited to, the following:
- a. Intra-department Organizational Controls
 - b. Inter-department Organizational Controls
 - c. Input and Output Controls
 - d. The User Operations Manual
 - e. User and Systems Contingency Plans
 - f. Controls Over Program Modification
 - g. Adequacy of Systems Documentation
 - h. Back-up, Recovery, and Access Controls
 - i. Review of Subsystems
 - j. Review of Automated Controls
 - k. Review of Security and Confidentiality Procedures
 - l. Data Processing Back-up and Recovery
 - m. Data Security, Privacy, and Integrity Review
 - n. Definition of Computer Audit Software
 - o. Updating of Manuals and System Documentation
 - p. Adequacy of Risk Analysis
 - q. Completeness and Accuracy of Data Generated for Reports to the State, including reports generated to support the accuracy of the payment invoices referred to Exhibit B, Attachment 1. These reports include, but are not limited to, the General CA-MMIS Billing Report.
 - r. Controls to ensure that Contractor employees are not inappropriately or fraudulently paying claims and whether these controls are being used.
 - s. Controls to ensure that the Contractor is implementing and abiding by DHCS-established policy.
 - t. Controls to ensure that the Contractor is not operating or utilizing programs not approved by the State and whether these controls are being used.

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- 4) Should DHCS direct the Contractor to Contract for this audit, the audit will be cost reimbursed by DHCS pursuant to Exhibit B, Attachment 1, of this Contract.
 - 5) The actual scope of work in the above audit(s) will be determined by DHCS, in writing, prior to commencement of the work.
 - 6) DHCS shall be the third party beneficiary of any auditing Contract between the Contractor and the CPA firm that will be conducting the EDP audit. Further, prior to the beginning of required audits, the CPA firm shall confer with DHCS to discuss the scope, breadth and depth of the audit. The CPA firm shall present its proposed audit plan to the Contractor, which shall, in turn, present this plan to DHCS for review and approval prior to its execution.
 - 7) Should DHCS direct the Contractor to Contract for this audit, DHCS shall receive copies, concurrent with the Contractor, of any and all audit reports, both draft and final. DHCS shall also have access to all related working papers. DHCS shall have the ultimate right to accept or reject any audit report submitted to it by the Contractor. Should an audit report be rejected, in whole or part, the Contractor shall have the audit/report redone within reasonable time constraints imposed by the Contracting Officer, at no additional cost to DHCS. If the Contractor fails to obtain an audit as required above, DHCS may, after notice, and at its option, employ an independent Certified Public Accountant firm to complete the required audit, in which case, no payment to the Contractor for the original audit shall be made.
 - 8) The requirements of this Provision shall apply to subcontracts. Subcontractors shall be required to assist the independent CPA firm in performing the audit of electronic data processing application systems of the Contractor as this audit relates to work performed under the subcontract(s).

C. Access to and Audit of Contract Records

- 1) In addition to the requirements found in “Audit and Record Retention,” section 7 of Exhibit D(F), the Contractor and subcontractor shall preserve and make available their Contract records for an additional period of four (4) years from the date of final payment under this agreement; thus, total record preservation and availability will be seven (7) years.
- 2) Should DHCS direct the Contractor to Contract for the audit, and should the audit or examination find that the Contractor is not fulfilling its responsibilities according to the terms of the Contract or that reports furnished in compliance with the provisions of the Contract are not true and correct, DHCS shall have the right to invoke any remedy available under the contract or under law or equity.

Should an audit or examination described above find that the Contractor has received payment to which it is not entitled under the Contract; such payments may be recouped by DHCS subject to the Contractor's right to dispute the recoupment as set forth in Additional Provision 27, Disputes and Appeals. Based on an audit or examination, DHCS may seek recoupment, through offset or legal action, following termination or expiration of the Contract.

D. Cost Reasonableness Audit

DHCS may procure a Cost Reasonableness (CR) Contractor to review any Systems Development Notice, Change Order or Enhancement cost estimates submitted by the FI Contractor to determine reasonableness and accuracy of the cost estimate.

The CR Contractor shall be used at the discretion of DHCS written direction to the FI Contractor. DHCS will select the Contract awardee from all submitted bids. In preparation of the audit the FI Contractor shall submit all working papers used in developing each cost estimate to be reviewed. All findings and working papers developed by the CR Contractor that are a result of the audit shall be submitted to DHCS for review. The FI Contractor shall implement and abide by the findings of the audit conducted by the CR Contractor, at the written direction of DHCS. The FI Contractor shall utilize any recommendations made by the CR Contractor, at the direction of DHCS and make the adjustment accordingly.

If the Contractor disagrees with the audit findings and recommendations and is able to provide documentation clearly showing why the audit finding and recommendations are invalid, the Contractor shall provide the said documentation to the Contracting Officer within fifteen (15) calendar days of the Contractor receiving the audit findings and recommendations.

10. Authority of the State

Sole authority to establish, define, or determine the reasonableness, the medical necessity and the scope and duration of covered benefits under the medical programs administered in the Contract or coverage for such benefits, or the eligibility of beneficiaries or providers to participate in the medical programs, or any aspect of reimbursement to providers, or the operation of the CA-MMIS, shall reside with DHCS.

Sole authority to establish or interpret policy and its application related to the above areas shall reside with DHCS.

The Contractor may not make any enhancements, limitations, or changes in the benefits or coverage for benefits; any changes in definition or interpretation of benefits; any manual or automated actions which change the resolution of claims failing edits/audits from that approved by DHCS; or any changes in any other aspect of the administration of the medical programs related to the scope of benefits, allowable coverage for those benefits, the eligibility of beneficiaries or providers to participate in the medical programs, the reimbursement of providers, or the operation of the CA-MMIS, except for emergency fixes, without the express, written direction of the Contracting Officer.

11. CA-MMIS Hardware/Equipment and Software

Contractor shall ensure that all CA-MMIS hardware, equipment and software Operations and supportive services meet all performance requirements in the Contract for both the Legacy and Replacement Systems.

Contractor shall be responsible for the acquisition, maintenance and necessary upgrades of all hardware/equipment and system software used for CA-MMIS Mainframe systems; non Mainframe systems; and all telecommunications and network

infrastructure including but not limited to those identified in Exhibit A, Attachment II, section A.6 – Subsystems.

At Assumption of Operations DHCS will not own or lease any hardware/equipment for the operation and supportive services of Legacy and Replacement CA-MMIS (except the Print Center equipment, UMD Field Office hardware/equipment, and desktop computers for State employees) unless approved in writing by the Contracting Officer.

DHCS shall own or lease all printing equipment housed at the Print Center and will cost reimburse the Contractor for any printing equipment used at the Print Center. DHCS shall own all desktop computers for State employees and will cost reimburse for any supplied by the Contractor during this Contract. Cost Reimbursement shall be covered under the payment provisions described in Exhibit B-1, Payment Provisions, Section 7 (Operations: Direct Cost Reimbursements).

All hardware/equipment used for Legacy and Replacement System operations of CA-MMIS shall have equivalent capabilities available for disaster recovery that meets requirements and timelines described in Exhibit A, Attachment II, Section KK, Backup and Recovery/Business Continuity Plan.

A. Hardware/Equipment Redundant Requirements

All redundant configuration information is defined in the Hardware/Software Configuration Manual.

Redundant hardware/equipment shall be used for AEVS, PTN, CMC, and Breast and Cervical Cancer Treatment Program (BCCTP) running in a redundant load balanced configuration, with scheduled and unscheduled failover capability, in separate buildings as described in Exhibit A, Attachment II, Section KK 6 – Backup and Recovery/Business Continuity Plan.

Redundant hardware/equipment shall be used for Medi-Cal Portal; Service, Utilization, Review, Guidance, and Evaluation (SURGE); Provider Relations Operations Subsystem, and POS Network shall be configured, at a minimum, as redundant load balanced application servers, with scheduled and unscheduled failover capability, in a single computer room.

All data and telecommunications network infrastructure shall be one hundred percent (100%) redundant with automatic failover including connections between State and Contractor data centers and Contractor supplied network in support of Providers and Medi-Cal stakeholders.

B. Hardware/Equipment Refresh

DHCS requires that all hardware/equipment including Contractor or DHCS owned or leased, being used for Operations, administration, or support of CA-MMIS, must adhere to the following unless a written waiver is approved in advance by the Contracting Officer:

- 1) All maintenance and release upgrades are kept current (within six (6) months of current date);
- 2) All desktops are refreshed every three (3) years from date of purchase;

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- 3) All servers are refreshed every five (5) years from date of purchase;
 - 4) All appliances are refreshed every five (5) years from date of purchase;
 - 5) All other equipment is refreshed every five (5) years from date of purchase; and
 - 6) All communication equipment including but not limited to routers, firewalls, and/or switches are refreshed every seven (7) years from date of purchase.

All Legacy Mainframe equipment is excluded from these refresh requirements.

Any DHCS owned hardware/equipment taken over by the Contractor in Takeover to be used exclusively on this Contract for Legacy primary or backup operations shall not be required to adhere to the refresh requirements described in the is section. All maintenance and replacement of the DHCS owned hardware/equipment taken over by the Contractor shall be the responsibility of the Contractor to meet all operations requirements of the Contract an no longer be cost reimbursed by the Department.

C. Software Refresh

DHCS requires that all software including Contractor or DHCS owned or leased being used for operations, administration or support of CA-MMIS, must adhere to the following requirements unless a waiver is approved in advance by the Contracting Officer in writing:

- 1) All software used by the Contractor must remain within two (2) versions of the latest available version unless incompatible with DHCS mandated standards including but not limited to desktops and automation office software; and
- 2) All software must be replaced that is identified as no longer supported by the software vendor either through sunset or end-of-life support. Contractor must provide DHCS with a written replacement plan within 30 days of identification of sunset or end-of-life support that must be approved by Contracting Officer in writing.

This Provision does not apply to systems and/or hardware/equipment that relate solely to the Contractor's internal personnel, budget, or accounting processes, or other internal Contractor processes that do not directly or indirectly impact the Contractor's ability to fulfill it's obligations under this Contract.

12. Change Orders

In the event DHCS alters the work required, or reallocated functions within the general scope of the Contract, that DHCS in its sole discretion may do at any time during the life of the Contract, and thereby resulting in a change in Contractor's responsibilities as defined in Additional Provision 20, Contractor Responsibilities. Please refer to the Glossary for the definition of a change order. A change order is not a change to the general scope of the Contract: therefore it does not require a contract amendment.

A. Change In Contractor Responsibilities

The Contractor's bid prices will remain in effect for required work through the end of the Contract. In the event DHCS alters the work required, or reallocates functions within the general scope of the Contract, that DHCS in its sole discretion may do at

any time during the life of the Contract, and thereby causes a documentable increase or decrease in the required effort of the Contractor, such action by DHCS shall be taken through a change order. (As used in this Provision, "documentable" means that there is quantitative evidence available (beyond mere speculation) to support the proposition that there is an "increase or decrease.")

- 1) The following twelve (12) conditions will not be justification for adjustment to the bid prices:
 - a. The change in status (OFF/ON/TEST) of CA-MMIS edits/audits.
 - b. Implementation of new edits/audits or refinement to existing edits/audits which enhances or clarifies the application of Medi-Cal policy or billing procedures in existence on the date of issuance of the RFP.
 - c. Implementation by the Contractor of Operating Instruction Letters (OILs) or other changes that would normally be made as part of the Contractor's responsibility.
 - d. Maintenance resulting from systems changes performed by the Systems Group, unless specifically identified during the Change Process assessment as stated in Exhibit A, Attachment III, Sections A.5.a.1 and A.10.a.1)d), and approved in writing by the Contracting Officer.
 - e. Central Processing Unit and other machine time required due to the restructuring of existing files, or the addition of new files, reports or programs, unless said restructuring is solely the addition of capabilities beyond that originally required in the Contract. (Special reports developed by the State or the Contractor or copying of files not required in the Contract will be paid on an hourly reimbursement basis.)
 - f. Execution of a Contract responsibility for which the Contractor is already receiving reimbursement.
 - g. Changes in claims volumes, eligibility inquiry volumes, drug utilization review volumes, and pharmacy and eligibility point-of-service equipment volumes that fall within RFP projected volumes ranges.
 - h. Design, development, installation, maintenance, or other activities defined in the Contract as part of the Contractual Responsibilities or Enhancements; and
 - i. Implementation of enhancements listed in the RFP as fixed price or enhancements or Optional Contractual Services proposed in the Technical Proposal.
 - j. The Contractor was not aware of any aspect of the current Contract, where details were available in the Data Library provided for in the RFP.
 - k. The Contractor did not inform DHCS of any contradiction in language, or any language they did not understand, where details were available in the Data

Library, which caused inappropriate pricing or understanding of responsibilities.

- I. Changes in utility rates or plans.
 - m. Increases in costs by Subcontractors which were included as part of the Contractor's narrative technical proposal.
- 2) In determining whether a price revision is necessary, consideration shall first be given to:
- a. Whether this effort has been offset by the implementation of cost reduction changes initiated by either the Contractor or DHCS as described in Additional Provision 46, Opportunities for Reduction in Operation Costs; and
 - b. Whether there are alternate means for implementing the change or whether there are resources being used elsewhere that can be made available for the change.
- 3) If the total cost for the adjustment exceeds the saving of the actions listed in 2)a. and 2)b., above, the change order process shall be utilized to compensate for the variable cost, plus overhead costs and profit. Total overhead costs plus profit shall not exceed a maximum of thirty percent (30%) of the total of all other approved change order pricing on any given Change Order.

B. Change Orders Implementation

This Provision is intended to be used in the case of a change in the amount of the Contractor's responsibilities that fall within the Scope of Work. If a change in Contractor responsibilities is proposed, the Contracting Officer shall issue a change order and specify the date of implementation (subject to Section C.2 (d) below).

C. Change Order - Contractor Requirements

All terms and conditions of the Contract shall apply to each change order, unless specifically modified by that change order.

The Contractor shall provide to the Contracting Officer within thirty (30) calendar days of receipt of the change order, a written statement that:

- 1) The change has no price impact on the Contractor; or
- 2) There is a price impact, in which case the statement shall include a completed cost pricing form (Attachment 17) for each phase of the change including design and development, if not done by the Systems Group, and Operations.

In addition, the Contractor shall submit with this form any information required to explain the Contractor's cost estimating process, including:

- a. The judgmental factors applied, and the mathematical or other methods used in the cost estimate, including those used in projecting from known data;

- b. The assumptions used by the Contractor in developing the cost estimate;
- c. A work plan meeting the requirements for work plans in the Request for Proposal, Section T, Contract Terms and Conditions; and
- d. A separate itemization of items to be paid by cost reimbursement.

DHCS shall negotiate with the Contractor to reach agreement on change orders. In cases where additional information is required, the Contractor shall provide needed information within ten (10) calendar days of request. After the parties reach an agreement, an official letter, including any written correspondence reflecting an agreement in the change of the fixed bid price, shall be incorporated into the Contract. If the parties are unable to reach an agreement, the Contracting Officer shall order, in writing, the implementation of the change order and make a determination of the revised prices. The Contractor shall proceed with the implementation of the change order as approved in writing by the Contracting Officer, subject to the Contractor's right to dispute the Contracting Officer's determination of the price pursuant to Additional Provision 27, Disputes and Appeals.

D. Contractor Initiated Change Orders

The Contractor shall not institute any modification to its procedures, operations, or organization that would directly or indirectly increase or decrease the cost to DHCS without first:

- 1) Submitting a written statement of the type described in Section C above, and
- 2) Receiving approval in writing from the Contracting Officer to institute the modification.

E. Change Order Approvals

- 1) All increased costs of performance attributable to Contractor-initiated change orders incurred prior to receipt of such written approval as set forth above shall be unallowable.
- 2) A change order must be approved by the California Department of General Services and the California Department of Finance if the change order:
 - a. Costs the State in excess of two-hundred fifty thousand dollars (\$250,000) for design, development, and installation (excluding changes performed by the Systems Development Group); or
 - b. Results in a one-time operations cost of more than two-hundred fifty thousand dollars (\$250,000).
- 3) The California Department of Finance review may also require a thirty- (30) day notice to the Legislature before approval.; and

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- a. If the change order causes a one-time cost to the State greater than \$250,000, then it shall be subject to review by the California State Legislature.
 - b. Change orders shall be subject to Centers for Medicare and Medicaid Services (CMS) review.

13. Conflict of Interest, Incompatible Activity of Contractor and Employees

A. Definition(s)

- 1) For purposes of this Provision “Contractor” means the Contractor, any parent entities or corporations, subcontractors, or any of the above parties’ employees, directors, consultants, or officers.
- 2) For purposes of this Contract, indirect interest and indirect income shall be defined as any interest owned or income received by the spouse, parent(s), or dependent(s) of the Contractor.

B. Contractor Responsibilities – General

DHCS intends to avoid any real or apparent conflict of interest on the part of the Contractor. Thus, DHCS reserves the right to determine, at its sole discretion, whether any information, assertion or claim received from any source indicates the existence of a real or apparent conflict of interest; and, if a conflict is found to exist, to require the Contractor to submit additional information or a plan for resolving the conflict, subject to DHCS review and prior approval. While it is desirable that the Contractor not have any contractual or financial relationships with providers, such relationships may be permissible so long as prompt, full disclosure is made and adequate protective Conflict of Interest Avoidance Plans and procedures are developed, and reviewed and accepted by DHCS.

DHCS requires the annual completion and submission of a Statement of Economic Interests, Form 700 by the Contractor. Forms must be completed and submitted for all employees, officers, or directors of the Contractor who are in any way involved in the administration or performance of work under the Contract or who have access to files (electronic or paper) related to the Contract and related work or are located in shared facilities with employees, officers or directors who are involved in the administration or work or do have access to files. The Contractor shall require all its employees, officers, and directors to file the completed Form 700 with the

Contractor’s personnel office within 30 days of assuming or leaving employment and not later than March 1st of each year of continued employment. The Contractor must also submit a Disclosure Statement identifying any and all employees who have a conflict of interest, and must submit copies of all Form 700s to the DHCS Program Contract Manager.

Additionally, all Statement of Economic Interests 700 forms must be accompanied by a Supervisor Review Transmittal Form. This form requires three levels of review: the employee’s immediate supervisor; the Chief of the DHCS-ISCAB, and the DHCS Contracting Officer.

Failure to submit all Statement of Economic Interests 700 forms or Disclosure Statements in a timely manner as instructed by DHCS will result in withholding of administrative payments due under the Contract until compliance is met.

C. Conflicts of interest include, but are not limited to:

- 1) An instance where the Contractor has an interest, financial or otherwise, whereby the use or disclosure of information obtained while performing services under the Contract would allow for private or personal benefit or for any purpose that is contrary to the goals and objectives of the Contract.
- 2) An instance where the Contractor's employees, officers, or directors use their positions for purposes that are, or give the appearance of being, motivated by a desire for private gain for themselves or others, such as those with whom they have family, business or other ties.
- 3) If DHCS is or becomes aware of a known or suspected conflict of interest, the Contractor will be given an opportunity to submit additional information or to resolve the conflict. A Contractor with a suspected conflict of interest will have five (5) working days from the date of notification of the conflict by DHCS to provide complete information regarding the suspected conflict. If a conflict of interest is determined to exist by DHCS and cannot be resolved to the satisfaction of DHCS, the conflict will be grounds for terminating the Contract. DHCS may, at its discretion upon receipt of a written request from the Contractor, authorize an extension of the timeline indicated herein.
- 4) The Disclosure Statement shall fully describe any direct or indirect interest the Contractor has in any provider of Medi-Cal services (as defined in the California Code of Regulations, Title 22, Section 51051) or in any billing agent(s) for Medi-Cal services, together with the name and position description of the Contractor, parent corporation, or subcontractor employee, director, consultant, or officer about whom the disclosure is being made.
- 5) At a minimum, the Contractor's Disclosure Statement shall disclose the name and address of any and all providers or billing agent(s) for Medi-Cal services in which:
 - a. The Contractor has a direct or indirect interest of more than one thousand dollars (\$1,000);
 - b. The Contractor is a director, officer, partner, trustee, employee, or holder of a management position, or is self-employed; and
 - c. The Contractor has derived more than two hundred and fifty dollars (\$250) in direct or indirect income within the twelve (12) months immediately prior to the submittal of a proposal.
- 6) The Contractor shall disclose the name of any proposed subcontractor, consultant, officer, director, or employee who was employed by the State of California in DHCS, the Governor's Office, Health and Welfare Agency, State

Controller's Office, Office of the Attorney General, and/or the Legislature within the past two (2) years in accordance with Welfare and Institutions Code, Section 14104.6.

- 7) If a real or apparent conflict exists, the Contractor shall, together with the disclosure and at the time of that document's submittal, submit a Conflict of Interest Avoidance Plan and procedures to hold separate such relationships and/or to safeguard against conflicts. If the Contractor has nothing to disclose under this Provision, it shall so certify in its Disclosure Statement.
- 8) The Contractor Representative, or his/her designee, shall certify under penalty of perjury that such reports and updates to such reports are accurate, complete and current to the best of that individual's knowledge and belief, unless the requirement is expressly waived by the Contracting Officer in writing.
- 9) The Contractor shall submit a Conflict of Interest Avoidance Plan, with the required Disclosure Statement to safeguard against conflict of interest. This plan shall include procedures to:
 - a. Guard against conflict of interest;
 - b. Hold separate any disclosed relationships or any potential conflict of interest relationships that could arise during the life of the Contract including, but not limited to, such problematic matters as financial interactions; reporting; sharing of office space; staff interactions; or Contractor fulfillment of Contract responsibilities; and
 - c. Ensure that the Contractor shall discharge its responsibilities and duties with disinterested skill, zeal, diligence, and that no Contractor's, parent corporation's, or subcontractor's employee, officer, director, or consultant will be in a position to exploit that position for private benefit or for other Contractor, or parent corporation, or subcontractor interests which are or may be in conflict with DHCS or State interests.

D. Conflict Of Interest, Current and Former State Employees

1) Current State Officers and Employees

- a. The Contractor shall not utilize in the performance of the Contract any State officer or employee in the State civil service or other appointed State official unless the employment, activity, or enterprise is required as a condition of the officer or employee's regular State employment. An employee in the State civil service is defined to be any person legally holding a permanent or intermittent position in the State civil service.
- b. If any State officer or employee is utilized or employed in the performance of the Contract, Contractor shall first obtain written verification from the State that the employment, activity, or enterprise is required as a condition of the officer's, employee's, or official's regular State employment and shall keep said verification on file for three years after the termination of the Contract.

- c. The Contractor may not accept occasional work from any currently employed State officer, employee, or official.
- d. If any currently employed State officer, employee, or official works on a volunteer basis for the Contractor, the Contractor may not reimburse, or otherwise pay or compensate, such person for expenses incurred, including, without limitation, travel expenses, per diem, or other compensation in connection with volunteer work for the Contractor.
- e. The Contractor shall not employ any State officers, employees, or officials who are on paid or unpaid leave of absence from their regular State employment.
- f. The Contractor shall notify each of its employees, and any other person having a financial interest in the Contract that it is unlawful under Public Contract Code, Section 10410 for such person to become a State officer, employee, or official during the life of the Contract unless any relationship with the Contractor giving rise to a financial interest in this or any other state contract, as an employee or otherwise, is first terminated.
- g. State employee's travel expenses shall not be reimbursed by the Contractor.

(Citation: Public Contract Code Section 10410.)

2) Former State Officers and Employees

- a. The Contractor shall not utilize in the performance of the Contract any formerly employed person of any State agency or department that was employed under the State civil service, or otherwise appointed to serve in the State government, if that person was engaged in any negotiations, transactions, planning, arrangement, or any part of the decision-making process relevant to the Contract while employed in any capacity by any State agency or department. This prohibition shall apply for a two-year period beginning on the date the person left State employment.
- b. The Contractor shall not utilize within 12 months from the date of separation of services, a former employee of the contracting State agency or department if that former employee was employed in a policy-making position in the same general subject area as the proposed Contract within the 12-month period prior to the employee leaving State service.

(Citation: Public Contract Code Section 10411.)

3) Failure to Comply with paragraphs (1) or (2) above

If the Contractor violates any provision of paragraphs (1) or (2) above, such action by the Contractor shall render the Contract void, unless the violation is technical or nonsubstantive.

(Citation: Public Contract Code Section 10420.)

14. Conformance with State and Federal Statutes and Regulations

- A. This Contract is subject to Title XIX of the federal Social Security Act (42 U.S.C.1396 et seq.) and, accordingly, the Contractor agrees to conform to such requirements and related regulations on the date the Contract becomes effective, to include all future amendments to the law, regulation or guidelines, provided:
- 1) Changes which would materially affect costs of performance shall only be implemented with written approval of the Contracting Officer pursuant to the Contract; and
 - 2) That no confidential data is to be released without prior, written approval from the DHCS or prior written approval from the beneficiary member concerned.
- B. The Contractor shall comply with the requirements of California and federal law, to include related regulations and published guidelines, to the extent that these authorities contain requirements applicable to Contractor's performance under the contract. These authorities include, without limitation, the California Welfare and Institutions Code, the California Government Code, the California Public Contract Code, the Code of Federal Regulations, the California Code of Regulations, the State Administrative Manual (SAM), the Health Administrative Manual (HAM), the State Medicaid Manual and the Health Insurance Portability and Accountability Act (HIPAA) of 1996 (Public Law 104-191, dated August 21, 1996). (See Additional Provision 32, Health Insurance Portability and Accountability Act.)

15. Consultant Conduct and Filing Requirements

- A. When a Consultant or representative of a DHCS Contractor performs work on DHCS premises, the Consultant or representative shall follow and adhere to all DHCS policies and procedures including, but not limited to, those governing health and safety, nondiscrimination, appropriate vehicle use, travel reimbursement, security and confidentiality of information, incompatible activities, acceptable employee conduct, information technology protocols and requirements, workplace violence prevention, and conflict of interest filing instructions (if applicable). Consultants and representatives may not access DHCS confidential, personal, or sensitive information until they have been trained on the DHCS policies and procedures for information privacy and security and sign a Confidentiality Statement. This training may be accomplished through the on-line Privacy/Security Training on the DHCS intranet.
- B. Certain consultants designated by the DHCS' Conflict of Interest Code are required to complete and file a Statement of Economic Interests, Form 700. Consultants to whom this requirement applies are described in Provision 13, Conflict of Interest, Incompatible Activity of Contractor and Employees. The Contractor agrees that such Consultants shall obtain a Form 700 and filing instructions from the Fair Political Practices Commission at <http://www.fppc.ca.gov>; fully complete the Form 700; and file it in a timely manner as specified in Provision 16, Contract Communication. The Consultant shall file the completed Form 700 in a timely manner with the DHCS

Personnel Office and submit a copy to the DHCS Program Contract Manager. This form requires three levels of review: the employee's immediate supervisor; the employee's second-level manager, and the DHCS Contracting Officer. Failure to obtain, complete, or file a Form 700 in a timely manner may result in Consultant substitution/replacement. Refer to Provision 13, Conflict of Interest, Incompatible Activity of Contractor and Employees, for more information involving the submission of Form 700.

16. Contract Communication

- A. Any notice required by the Contract shall be written and sent by registered or certified mail, return receipt requested, or shall be delivered in hand and a receipt given by the recipient, and shall be effective upon receipt by the Contracting Officer or the Contractor, whichever is the addressee. Contractor correspondence, received by DHCS after 2:00 PM Pacific Time will be date-stamped as received the next State work day. All notices, including correspondence and reports, shall also be submitted to DHCS electronically, in a manner designated by DHCS.
- B. Notwithstanding any other provision of the Contract, any Contracting Officer's approvals must be received in writing by the Contractor prior to the Contractor taking any action requiring such approval, unless the Contracting Officer specifically exempts, in writing, the Contractor from this requirement.

DHCS shall be bound only by Fiscal Intermediary (FI) letters, unless otherwise specified in this RFP. These FI letters represent DHCS's direction to the Contractor; are issued by the Contracting Officer, or representative, over the Contracting Officer's signature block; and are sequentially numbered. The Contractor shall respond with its own set of sequentially numbered letters issued by the Contractor Representative or designee, which shall bind the Contractor.

- C. The Contractor shall provide twice daily courier service between the Contractor and the Contracting Officer, between the Contractor and DHCS on-site staff, and between the Contracting Officer and DHCS on-site staff. The Contractor shall provide daily courier service between the Contractor and all report users, who will be designated by the Contracting Officer, within a thirty-five (35) mile radius of the State Capitol. The Contractor must use a traceable bonded courier service when delivering documents or reports that contain Personal Health Information (PHI) or Personal Confidential Information (PCI) for multiple persons, unless an exemption to

this requirement is granted by the Contracting Officer. Reports for users outside the thirty-five (35) mile radius may be mailed to them in accordance with requirements of Exhibit A, Attachment II, HH.3.b. of this Contract. However, documents and reports containing PHI or PCI for multiple persons must be sent by traceable bonded courier, regardless of the recipient's proximity to the State Capitol, unless an exemption to this requirement is granted by the Contracting Officer. The Contractor will be cost reimbursed for postage only. All Contractor reports shall be in hardcopy or via such other media as may be prior approved by the Contracting Officer. The Contractor and DHCS shall respond to each other within five (5) State work days, or a time period designated in writing by the Contracting Officer.

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- D. All written correspondence received by DHCS after 2:00 PM Pacific Time will be date-stamped as received the next State work day.

17. Contractor and Subcontractor Employees

- A. A contractor or subcontractor employee that has, been convicted of any felony or misdemeanor involving fraud or abuse in any governmental program, or in connection with the interference with or obstruction of any investigation into health care related fraud or abuse may, at the Contracting Officer's discretion, be disqualified from work under the Contract. If it is discovered that a contractor or subcontractor employee is under investigation by DHCS or any federal, state, or local government law enforcement agency for fraud or abuse, that employee shall be subject to temporary suspension from work under the Contract.
- B. DHCS, at its discretion and consistent with any State or federal laws concerning civil rights, may require the Contractor to submit fingerprints for its employees.

18. Contractor Certification

With respect to any report, invoice, record, paper, document, book of account, or other Contract required data submitted to the Contracting Officer in support of an invoice or document submitted to meet Contract requirements, including, but not limited to, proof of insurance and bonding, Lobbying Certifications and Disclosures, Conflict of Interest Disclosure Statements and/or Conflict of Interest Avoidance Plans, pursuant to the requirements of the Contract, the Contractor Representative or his/her designee shall certify that the report, invoice, record, paper, document, book of account or other Contract required data is current, accurate, complete and in full compliance with legal and contractual requirements to the best of that individual's knowledge and belief, unless the requirement for such certification is expressly waived by the Contracting Officer in writing.

Where, in the Contract, there is a requirement that the Contractor "certify" or submit a "certification", such certification shall be in the form of an affidavit or declaration under penalty of perjury dated and signed by the Contractor Representative or his/her designee.

19. Contractor Resource Levels

The Contract requires that the Contractor meet all the contractual requirements and responsibilities listed herein.

During the life of the Contract the State may mandate or experience budgetary constraints, which may impact the Contractor and its staff, such as State employee furlough's in February 2009, which required the State to close down all non-safety State buildings two (2) days per month. The Contractor shall be held to achieving performance based deliverable requirements during such interruptions. The Contractor must be prepared at various times during the life of the Contract to implement alternative work week schedules, such as 4/10's which equates to forty (40) hours worked per Week, 9/8/80 schedule which is eighty (80) hours worked in a two (2) week period or other recommended Department approved alternative schedule. Overtime shall only be paid by the State with written prior approval from the Department.

A. Staff Reporting

The Contractor shall provide DHCS with two (2) staffing reports, periodically throughout the life of the Contract. The Contractor shall provide these reports adhering to Exhibit A. Attachment II, section HH., General Reporting Requirements and specific subject to Department review and approval for format and content. Following Department approval of the initial submittal for format and content, subsequent reports will conform to this approved model. The Contractor shall provide DHCS two (2) hardcopies of each report and a copy of each report shall also be submitted to DHCS electronically, in a manner designated by DHCS.

1. Staff Loading Chart:

The first (1st) report, the Staff Loading Chart Report, shall include all Contractor staff currently working on the Contract; hourly reimbursed fixed price and cost reimbursed; listing each by staff name, and including for each: employee identification code, functional position title, organizational work area, staff category and job classification designation; comparing each to the staff proposed in its Narrative Technical Proposal or as modified with approval of the Contracting Officer. This report shall be in the format defined in Takeover, and approved by the Contracting Officer. This report shall show average staffing for the past twelve (12) months, beginning with the first (1st) prior month. This report shall be provided to the Department one (1) month after Contract effective date and every month thereafter, by the fifth (5th) State work day of the month, or as agreed to by the Contracting Officer.

2. Hiring Progress Report:

The second (2nd) report, the Hiring Progress Report, shall detail the status and progress of the actual hiring of personnel compared with the Organizational and Personnel Acquisition Plan and the Staff Loading Chart submitted as part of the plan. This report shall provide the number of all staff, including billable and fixed price, by function and classification who have reported to work during that month. This report shall be provided to the Department, one (1) week after Contract effective date and every other week thereafter, or as agreed to by the Contracting Officer.

Further, the Contractor shall utilize, and make available to the State, an automated system that records all time that each employee works specified by assigned activity. This data shall be automatically collected into the automated, COTS tool specified in Exhibit A, Attachment III, Section A.3.c. Project Management, Portfolio Management, and Reporting. The COTS tool must provide a transparent view of the Contractor's operations and staffing and must have the capability to generate reports and provide electronic access to DHCS, to view in a screen format all positions and employees. The information viewed should be the same for both the Contractor and DHCS. For each employee, the system shall automatically record separately all billable and non-billable hours by activity, SDN number, etc., as well as the employee's regular hours worked, leave of absence hours, and overtime hours. DHCS will be provided full access to all data and will be able to sort by project code to view all resources charging

time to that code. Also, DHCS staff shall be provided access to view by resource, in order to view all projects that resource is charging. The records and access shall be maintained for the life of the Contract and fully accessible to DHCS staff, as designated by the Contracting Officer. This automated system must also provide the capability to allow DHCS to download the data and use this data by a automated system must be linked to the Contractor's payroll accounting system and each employee's hours (billable and non-billable hours) must reconcile to the Contractor's payroll accounting system. Access to the Contractor's payroll accounting system will be limited to the monitoring, oversight and validation by the Department of billed charges and for auditing purposes described in the Special terms and Conditions Exhibit D(F). By the tenth (10th) State work day of each month, following the month worked, the Contractor must utilize this system to provide DHCS with monthly summary reports which summarize the number of hours by employee and overall time spent on each Contract task/function. In addition, the Contractor shall maintain, by pay period, timesheets that are signed by the employee and their immediate supervisor. The Contractor shall reconcile the COTS reporting to the time sheets each month. This reconciliation shall also accompany the systems group invoice each month. As stated in Exhibit B-1, payment for the systems group invoice will not be paid until such reports are provided.

B. Employee Time Reporting

This provision applies to the Contractor employees invoiced on a fixed price basis. DHCS requires the Contractor to ensure all Contractor staff positions are fully staffed for the life of the Contract, according to the Organizational and Personnel Acquisition Plan approved by the Contracting Officer.

Under no circumstance will the Contractor be paid for vacant Contractor fixed price staff positions listed in sections A and B of Exhibit J For all instances during the life of the Contract where payments will not be made, deductions shall be made from appropriate fixed price invoice payments.

The Contractor is required to back-fill all vacant Contractor fixed price staff positions listed in sections A and B of Exhibit J in a timely manner. For all instances during the life of the Contract where Contractor fixed price staff positions listed in sections A and B of Exhibit J are vacant greater than thirty (30) calendar days, except during portions of Takeover and Turnover, deductions from the Adjudicated Claim Line (ACL) Required Staff (Exhibit B, Attachment 1, A.4.b.(5.1)c) invoice payments shall be made, pursuant to Exhibit E, Section 26 (DHCS Right to Equitable Adjustment), and shall not be less that twelve thousand five hundred dollars (\$12, 500) per month, or portion of a month, for each vacant position.

During Takeover, prior to the Assumption of Operations, where Contractor fixed price staff positions listed in sections A and B of Exhibit J are vacant greater than thirty (30) calendar days, deductions from the Takeover invoice payments will be made for all vacant Contractor fixed price staff positions listed in sections A and B of Exhibit J following the same process outlined in the paragraph above.

During Turnover after the Transfer of Contractor Operations, where Contractor fixed price staff positions listed in sections A and B of Exhibit J are vacant greater than

thirty (30) calendar days, deductions from the final twenty percent (20%) Turnover invoice payment will be made for all vacant Contractor fixed price staff positions listed in sections A and B of Exhibit J following the same process outlined in this section above for invoice payment deductions.

Such deductions may include the above-described invoice payment deductions and any proximately caused damages incurred by the State for work not completed due to the vacant Contractor fixed price staff positions listed in sections A and B of Exhibit J.

C. Hourly Reimbursable Employees And Special Groups

This provision applies to the Contractor employees invoiced on an hourly reimbursable basis, including those Contractor employees in special groups.

- 1) Those Contractor employees designated as hourly reimbursable employees and their supervisors shall work solely on Department-identified and prioritized work under the Contract, except with the prior and express approval of the Contracting Officer. These staff shall not be assigned to any Contractor business proposals, including the rebid of the Contract, unless authorized in advance by the Contracting Officer. In requesting authorization, the Contractor shall address how the existing workload will be completed, during the redirection of staff's time. There should be no negative impact to the ongoing operations as a result of the staff's redirection. The Contractor shall submit the names, resumes, and other required identifying information on each hourly reimbursable employee and their supervisors in the form and in the manner required by the Contracting Officer; which shall include, but not be limited to, the Contractor reporting all changes to the staffing mix provided in the Narrative Technical Proposal (NTP). The Contracting Officer must specifically approve each hourly reimbursable employee prior to that individual's assumption of his/her designated duties. Should any change occur in those individuals designated as hourly reimbursable employees due to the reassignment or transfer of the individual by the Contractor, the Contractor shall notify the Contracting Officer thirty (30) calendar days prior to the change and shall submit all required information on a new, qualified nominee to assume the designated duties at the time of notification, unless the Contracting Officer grants additional time. Should the employee separate his/her employment with the Contractor without advance notice, the Contractor shall notify DHCS of the change within three (3) State work days of notice from the employee to the Contractor. Any time worked by an employee without prior Department approval shall not be payable by the State.
- 2) Should the Contracting Officer find that an hourly reimbursable employee is failing to provide or perform the designated duties of his/her position in a manner that is acceptable to DHCS, the Contracting Officer may, in accordance with the Contract, require the Contractor to provide the employee with specialized training to improve performance or production, transfer the employee from the special group or simply not allow payment for those hours. Should training be required, the Contractor shall submit a plan to provide such training within fourteen (14) calendar days of the formal written request to the Contracting Officer for his/her review and approval. Under no circumstances shall this "On the Job Training" be

hourly reimbursable under this Contract. Providing of all equipment, networks, training facilities, training materials and trainers are to be included as part of the Contractor responsibilities and included as part of the fixed price. Should transfer be required, the Contractor shall comply within fourteen (14) calendar days of the request and, also, during that time, shall submit all required information on a new, qualified nominee to assume the designated duties.

The Contracting Officer's discretionary power to require additional training or to require transfer of an hourly reimbursable employee will not be unreasonably exercised nor will his/her approval be unreasonably withheld.

D. Published List of Staff Contact Information

The Contractor shall provide the Contracting Officer with a monthly updated list of direct business line phone numbers and business e-mail addresses for Contractor Management Team staff.

E. Organization Charts

By the fifth (5th) State work day of each month, the Contractor shall provide the Contracting Officer with updated organization charts and descriptions showing the location of the CA-MMIS in the Contractor's firm, and organization charts and descriptions for all CA-MMIS Operations areas. The functional responsibilities of each organizational unit, the delegation of responsibilities to CA-MMIS organizational units, organizational decision-making points, and unit staffing by classification shall be provided.

F. Staffing Requirements

The Contractor shall demonstrate its ability to recruit and retain skilled and highly qualified staff and to provide adequate staffing in every phase and/or time period of the Contract. The Contractor shall assure that staffing levels are sufficient to implement all aspects of the work required in the Contract; within timeframes specified within the Contract; and in accordance with the required deliverables; and quality and performance standards and measures defined within the Contract.

Any proposed changes to Contractor staff after the first day of Takeover, including but not limited to reducing staffing levels; modifying minimum qualifications for a position; or modifying position responsibilities; must have prior written approval by the Contracting Officer.

G. Definition of Staff

The Contractor shall have described its plan and commitment for fully staffing each phase and/or time period of the Contract as part of its Narrative Technical Proposal (NTP) response. Included in its NTP response the Contractor shall supply a certain minimum number of staff in categories specifically described in the Contract. The Contractor shall assure that all staff meet the minimum qualification requirements, and shall assure that all staff will perform the duties required under the Contract as bid.

The Department retains the right to reject any staff scheduling or staff assignments proposed by the Contractor that are inconsistent with the requirements set forth in the Contract.

H. Qualification Requirements

The Contractor shall assure that all staff assigned to the Contract meet the minimum qualification requirements defined in the Contract for all Contractor positions. These minimum qualification requirements apply to Contractor staff specifically identified in the requirements of the Contract; and to additional staff the Contractor identifies in its NTP response; and/or subsequently determines to be necessary to its satisfactorily meeting the requirements of the Contract.

Except where specifically defined differently elsewhere in the Contract, the Contractor shall assure that all Contractor positions are defined to include one of the following job classification designations and shall meet the minimum qualifications associated with each. In all deliverables the Contractor submits to the State that include Contractor staffing, the Contractor shall include these job classification designations. Exceptions to these requirements require prior written approval by the Contracting Officer.

1. **“Manager”** - a Contractor staff member designated as a Manager shall have attained higher education degree(s), shall possess current professional certification(s) and/or license(s), shall have greater breadth of knowledge and shall have relative work experience in their assigned field for a minimum of five (5) years while in a managerial role.
 - a. Education – shall have completed or be in the process of completing course work focusing on leadership decision making; personnel management, including staff performance planning, coaching and corrective actions; salary and expense tracking as part of the budget forecasting process; and written and verbal communications skills. Increased relative work experience, completed managerial course training and demonstrated accomplishments may be substituted for a degree.
 - b. Certifications/Licenses – shall have obtained professional certification(s) and/or license(s) relative to the position. Increased relative work experience and demonstrated accomplishments may be substituted for professional certification(s) and/or license(s) unless the duties performed require specific certification or licensure pursuant to State laws.
 - c. Breadth of knowledge – shall possess detailed working knowledge of Medicaid/Medicare regulations/standards. Shall have detailed working knowledge of industry standards, area of study fundamentals and best practices relative to the role assignment area.
 - d. Relative work experience – shall possess a minimum of five (5) years increasingly responsible experience leading, developing, coaching and managing a staff for a government or private sector health care payer; including a minimum of two (2) years MMIS experience in a state of

equivalent scope to California. Extensive managerial and administrative experience shall include functions such as program planning; policy formulation; organization coordination and control; and fiscal and personnel management. Shall have effective communication, organization and prioritization skills; and proven ability to direct and motivate the workforce.

2. **“Professional”** - a Contractor staff member designated as a Professional shall have attained higher education degree(s), shall possess current credentials and/or licenses in disciplines relative to the position; and shall have relative work experience in their assigned field for a minimum of five (5) years.
 - a. Education – shall have attained higher education level degree(s) from an accredited four-year (4) university/college. Shall have completed graduate level coursework in disciplines relative to the assigned role.
 - b. Credentials/Licenses – shall have obtained professional credentials and/or license(s) in disciplines relative to the position that are valid in the state of California. Credentials and/or licenses to practice in their professional field must be current at the time of hire and remain current during the entirety of their employment.
 - c. Breadth of knowledge – shall possess working knowledge of Medicaid/Medicare regulations, standards and processes. Shall have detailed working knowledge of industry standards, area of study fundamentals and best practices relative to the role assignment area.
 - d. Relative work experience – shall possess a minimum of five (5) years increasingly responsible experience in a role relative to their professional credentialing and/or licensing working for a government or private sector health care payer; including a minimum of two (2) years MMIS experience in a state of equivalent scope to California.
3. **“Supervisor”** – a Contractor staff member designated as a Supervisor shall possess education, professional certification(s) and/or license(s), have breadth of knowledge and have relative work experience in their assigned field for a minimum of two (2) years.
 - a. Education – shall have completed or be in the process of completing course work focusing on leadership decision making; personnel management, including staff performance planning, coaching and corrective actions; salary and expense tracking as part of the budget forecasting process; and written and verbal communications skills.
 - b. Certifications/Licenses – shall have obtained professional certification(s) and/or license(s) relative to the position. Increased relative work experience and demonstrated accomplishments may be substituted for professional certification(s) and/or license(s) unless the duties performed require specific certification or licensure pursuant to State laws.
 - c. Breadth of knowledge – shall possess detailed working knowledge of Medicaid/Medicare regulations/standards. Shall have detailed working

knowledge of industry standards, area of study fundamentals and best practices relative to the role assignment area.

- d. Relative work experience – shall possess a minimum of five (5) years increasingly responsible experience leading, one (1) years experience in team leading roles, including opportunities to fill-in for supervisors in their absence. Shall have a minimum of two (2) years experience in the role assignment area.
4. **“Senior”** – a Contractor staff member designated as a Senior shall, in addition to the minimum qualifications for Associate and Advanced levels (when applicable), possess superior education, professional certification(s) and/or license(s), have greater breadth of knowledge and have relative work experience in their assigned field for a minimum of five (5) years.
- a. Education – shall have obtained at least a bachelor level degree from an accredited four-year (4) university/college or technical institute. Other completed relative courses of study and/or increased relative work experience and demonstrated accomplishments may be substituted for a degree with Contracting Officer’s prior written approval.
 - b. Certifications/Licenses – shall have obtained professional certification(s) and/or license(s) relative to the position. Increased relative work experience and demonstrated accomplishments may be substituted for professional certification(s) and/or license(s).
 - c. Breadth of knowledge – shall possess detailed working knowledge of Medicaid/Medicare regulations/standards. Shall have detailed working knowledge of industry standards, area of study fundamentals and best practices relative to the role assignment area.
 - d. Relative work experience – shall possess a minimum of five (5) years increasingly responsible experience working for a government or private sector health care payer. Experience shall include functions such as team lead, internal and external communications, organization and prioritization skills; and proven ability to deliver quality products and services while meeting deliverables objectives.
5. **“Advanced”** – The Advanced category is intended to identify those staff members who have demonstrated competency in an Associate role for at least one (1) year, and who have completed specialized training and have demonstrated competency for at least one (1) year in using systems tools relative to the position; that enable the staff member to perform enhanced functions relative to the area assigned; such as but not limited to, reporting tools, data mining tools, database management tools, statistical measuring tools, process design tools, and others.
6. **“Associate”** – a Contractor staff member designated as an Associate shall possess required education level, have obtained required professional certification(s) and/or license(s), have required breadth of knowledge and have relative work experience in their assigned field for a minimum of two (2) years.

- a. Education – For non-technical positions the staff member shall have completed all baseline training courses for the relative area of work. For technical positions the staff member shall be currently enrolled in and have completed at least seventy-five percent (75%) of studies leading to a bachelor level degree from an accredited four-year (4) university/college, or similar technical institute; in a field of study relative to the work area the individual will Apprentice. Other completed relative courses of study may be substituted for a degree with Contracting Officer's prior written approval.
 - b. Certifications/Licenses – shall be pursuing and have completed at least fifty percent (50%) of course segments leading to professional certification(s) and/or license(s) relative to the position. Increased relative work experience and demonstrated accomplishments may be substituted for these professional certification(s) and/or license(s) requirements.
 - c. Breadth of knowledge – shall possess working knowledge of Medicaid/Medicare regulations/standards. Shall have working knowledge of industry standards, area of study fundamentals and best practices relative to the role assignment area.
 - d. Relative work experience – shall possess a minimum of two (2) years of increasingly responsible experience in a work area relative to the area the individual will be assigned.
7. **“Apprentice”** – a Contractor staff member designated as an Apprentice shall have completed or nearly completed education requirements, and possess working knowledge and have relative work experience for the position.
- a. Education – For non-technical positions the staff member shall have completed or be currently enrolled in training courses for the relative area of work. For technical positions the staff member shall be currently enrolled in and have completed at least fifty percent (50%) of studies leading to a bachelor level degree from an accredited four-year (4) university/college, or similar technical institute; in a field of study relative to the work area the individual will Apprentice. Other completed relative courses of study may be substituted.
 - b. Certifications/Licenses – shall be pursuing and have completed at least twenty-five percent (25%) of course segments leading to professional certification(s) and/or license(s) relative to the position. Increased relative work experience and demonstrated accomplishments may be substituted for these professional certification(s) and/or license(s) requirements.
 - c. Breadth of knowledge – shall possess working awareness of Medicaid/Medicare regulations/standards. Shall have working awareness of industry standards, area of study fundamentals and best practices relative to the role assignment area.

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- d. Relative work experience – shall possess a minimum of one (1) year of experience in a work area relative to the area the individual will Apprentice.
8. **“Entry”** – a Contractor staff member designated as an Entry Level shall have satisfactorily met attitude and aptitude testing requirements during the interview selection process for the position. Entry level may not be used as a job classification designation for hourly reimbursed positions.
- a. Education – shall have completed high school or obtained a GED certificate. Increased relative work experience and demonstrated accomplishments may be substituted for a high school diploma or GED certificate, with Contracting Officer’s prior written approval.
 - b. Certifications/Licenses – shall have obtained professional certification(s) and/or license(s) relative to the position (e.g., Typing Certificate). Increased relative work experience and demonstrated accomplishments may be substituted for professional certification(s) and/or license(s).
 - c. Breadth of knowledge – none required.
 - d. Relative work experience – previous work experience desired.

Individuals filling Contractor staff positions required in the Contract must have acquired some portion of the experience required in the qualifications defined above and elsewhere in the Contract within the past five (5) years from the first day of Takeover, or from the date the position is filled during the life of the Contract; whichever date is most recent.

Included with the staff position resumes submitted to the State, the Contractor must provide supporting information that substantiates each individual’s experience and knowledge is commensurate with, or scalable to that individual satisfactorily performing in a MMIS of California’s size and complexity.

Professional certifications and/or licenses required in the Contract must be current; from the state of California or other approved government jurisdiction; not under suspension from Medicare, Medicaid, or from practice in California; and not previously sanctioned for fraud or abuse.

I. Contractor Management Team

The Contractor Management Team staff shall consist of those staff members with the functional roles/titles listed below. Contractor Management Team staff shall have direct managerial and administrative responsibility and control for the areas defined in Exhibit J – Staffing Requirements; and elsewhere in the Contract. These staff members shall be assigned on a full-time basis and shall be solely dedicated to this project.

The Executive Director/Program Director, referenced throughout the Contract as the **Contractor Representative**, shall remain assigned to the Contract for a period of not less than three (3) years and all other Contractor Management Team staff listed

below shall remain assigned to the Contract for a period of not less than two (2) years, unless:

- a. The person leaves the employment of the Contractor, any affiliates, and/or any subcontractor;
- b. There are less than three (3) (Contractor Representative) or two (2) (all other Management Team staff) years remaining in the Contract, in which case the assignment will be until the end of the Contract; the date of Contract termination; or
- c. The Contracting Officer provides prior written approval to release or transfer him/her sooner.

The Contractor shall notify the Contracting Officer within three (3) State workdays of notice from any Contractor Management Team staff member having separated his/her employment with the Contractor without advance notice, or from the date of notice of intent to separate employment with the Contractor.

The Contractor shall replace Contractor Management Team staff within thirty (30) calendar days from the date on which written notice of the proposed replacement was provided to DHCS, unless prior written DHCS approval for a different time interval has been provided. During this period, the Contractor shall consult with DHCS concerning the qualifications of the proposed replacement, the duration of transition periods, and other specific actions to be taken to ensure that performance under the Contract is not adversely impacted.

DHCS may disapprove any of the following:

- a. The proposed assignment by the Contractor of an individual to a Contractor Management Team position;
- b. The proposed transfer of an individual from a Senior Management Team position; and/or
- c. The proposed assignment of an individual to expert witness responsibility.

DHCS will not unreasonably exercise this authority.

Except where noted in the Contract, or approved in writing by the Contracting Officer, Contractor Management Team staff members may not serve in dual roles or capacities within this project.

The Contractor Management Team shall consist of those staff members with the following functional roles/titles:

1) Senior Management Team – Senior/Executive Manager positions

Senior/Executive Manager Staff referenced throughout the Contract as Senior Management Staff, shall be those individuals assigned to the positions listed below. Exhibit J, Staffing Requirements defines minimum qualifications and responsibilities for these positions.

The Contractor shall have provided names and resumes to the State for these high-level positions, including named back-up individuals with resumes for each

position, as part of their NTP response. The Senior/Executive Manager staff shall be in-position effective with the first day of Takeover, and shall remain in-position through each Contract Phase as defined in the table in Exhibit J, Staffing Requirements; and in Exhibit A, Attachment I, Takeover. The Senior/Executive Manager staff shall be stationed within the Sacramento area.

- a) Executive Director/Program Director (Contractor Representative)
- b) Program Chief Information Officer (CIO)
- c) Assistant Executive Director/Deputy Program Director (AED/DPD)
- d) Takeover Director (TOD)

2) Representative Resume Staff positions

Representative Resume staff shall be those individuals assigned to the positions listed in Exhibit J, Staffing Requirements, where qualifications and responsibilities for these positions are also defined. The Contractor shall have provided sample resumes for these high-level positions to the State as part of their NTP response. The Contractor shall have provided actual resumes to the State for all Representative Resume staff, and Representative Resume staff shall be in-position at the beginning of each Contract Phase, and shall remain in-position through each Contract Phase as defined in the table in Exhibit J, Staffing Requirements; and in Exhibit A, Attachment I, Takeover.

- a. Account Chief Financial Officer/Director (CFO/CFD)
- b. Claims Director
- c. Cost Containment Director/Program Integrity Director (CCD/PID)
- d. Enterprise Project Management Office (EPMO) Director
- e. Enterprise-wide Architect/Chief Technical Officer (EA/CTO)
- f. Field Office Automation Group (FOAG) Director
- g. Health Information Exchange (HIE) Director
- h. Human Resources Account Manager
- i. Information Security Officer (ISO)
- j. Internal Auditor
- k. Medical Director
- l. Privacy Officer (PO)
- m. Provider Relations Operation Director

- n. Quality Management Director (QMD)
- o. System Group (SG) Director
- p. System Group Replacement DDI Manager (SGRDM)
- q. Transition Director/Business Process Engineering Manager (TD/BPEM)

J. Dedicated Staff Definition, Qualifications and Duties

Dedicated Staff shall be those individuals assigned to the positions listed in the table in Exhibit J, Staffing Requirements, Section C., Dedicated Staff. The Contractor shall assure that all Dedicated Staff positions listed in this Contract are dedicated positions. Dual roles are only allowed where indicated in the Contract or in those instances when the Contractor has obtained prior written approval from the Contracting Officer. The Contractor shall provide names and resumes to the State for Dedicated Staff positions, and Dedicated Staff shall be in-position and performing requisite work duties for the entirety of the Contract Phase periods as defined in the table, except where otherwise indicated elsewhere in the Contract; or when prior written approval is obtained from the Contracting Officer.

20. Contractor Responsibilities - General

A. Cooperation

The Contractor shall cooperate fully with all other Contractors that may be engaged by DHCS to work on CA-MMIS related activities. The Contractor shall cooperate with DHCS and all law enforcement authorities in the investigation and documentation of possible fraud and abuse cases or any other possible misconduct related to the Contractor's responsibilities and performance under the Contract.

The Contractor shall cooperate and work collaboratively with DHCS and the successor Contractor, to the extent required by the Contracting Officer, during the procurement process for the CA-MMIS Contract and the transferring of CA-MMIS operations during the Contract Turnover and Takeover periods.

B. New Contract Requirements Established by Narrative Technical Proposal

The successful Proposer may offer in its Narrative Technical Proposal to meet requirements which exceed general RFP requirements. The more specific requirements contained in the successful Proposer's Narrative Technical Proposal shall supersede, when approved in writing by the DHCS, the RFP requirements for the purpose of measurement of Contractor performance and for the use of any legal recourse available to the DHCS. Under no circumstances shall requirements that are less specific than RFP requirements be accepted or become a part of the Contract, even if included in the Narrative Technical Proposal.

In the event there are inconsistencies or ambiguities between the Contractor's Narrative Technical Proposal and the RFP, or if the Narrative Technical Proposal

does not address RFP requirements, the RFP will govern over the Contractor's Narrative Technical Proposal.

C. Confidential Information

The Contractor represents and warrants that no program, process, composition, writing, equipment, appliance or device, trade-mark, service mark, logo, idea, or any other work or invention of any nature or any other tangible or intangible property whatsoever developed, provided, or used by the Contractor or their subcontractor's in connection with its performance under this Contract will be considered proprietary/confidential in nature to the Contractor without first obtaining the written approval of DHCS.

Public access to any confidential, proprietary, or trade secret information (hereinafter "proprietary information"), which is submitted to DHCS after the award of the Contract, shall be governed by the California Public Records Act (Government Code Section 6250, et seq.).

DHCS will withhold from public disclosure, to the extent permitted by law, any bona fide proprietary information pursuant to the provisions of Government Code Section 6255.

DHCS defines proprietary information for purposes of this Contract as: "Data or materials that the Contractor has identified in a satisfactory manner as being under the Contractor's control and which the Contractor has demonstrated as being of a proprietary nature by reason of copyright, patent, or trade secret under the laws of the State of California that are in effect at the Contract Effective Date (CED)". DHCS also has information such as hospital rates and smartkeys from First Data Bank which will be treated as confidential.

Proprietary information submitted to DHCS must be clearly labeled as "confidential" and must be submitted separately. Accompanying the pages designated confidential, the Contractor shall provide full and complete justification indicating the basis on which the claim of confidentiality is based.

DHCS will notify the Contractor in the event a request is made under the California Public Records Act for the release of proprietary information held by DHCS. DHCS will ascertain whether the Contractor's claim that the information is proprietary is bona fide, and may request additional justification from the Contractor. If DHCS determines that the claims are bona fide, DHCS will notify the requester that the information will not be released. If DHCS determines that the claim is not bona fide, DHCS will give the Contractor ten (10) business days prior written notice of its intent to release the information. The Contractor will be solely responsible for seeking judicial relief to protect such information from disclosure and for defending against any attempt by the requester to compel release of the information in court. The Contractor understands and agrees that DHCS is not required to take any action in court to protect the information, this being the Contractor's sole responsibility. Further, the Contractor will be solely responsible for any costs or attorney's fees it or DHCS incurs in connection with litigation related to protection of Contractor's proprietary information. Further, the Contractor will indemnify and hold harmless the DHCS from any claim or expense whatsoever which may occur as a result of DHCS

initially accepting the submitted information as proprietary, or of its handling of such information after a request is made for its disclosure.

D. Priority Hiring Considerations

Contractor agrees that it shall give priority consideration in filling vacancies in positions funded by this agreement to qualified recipients of aid under Chapter 2 (commencing with Section 11200) of Part 3 of Division 9 of the W&I Code, in accordance with Article 3.9 (commencing with Section 11349) of Chapter 2 of Part 3 of Division 9 of the W&I Code.

This provision shall not be construed to do any of the following:

- 1) Interfere with or create a violation of the terms of valid collective bargaining agreements;
- 2) Require the Contractor to hire an unqualified recipient of aid;
- 3) Interfere with or create a violation of any federal affirmative action obligation of the Contractor for hiring disabled veterans or veterans of the Vietnam era; and
- 4) Interfere with or create a violation of the requirements of Section 12990 of the Government Code, implementing the DHCS of California's nondiscrimination laws.

21. Cost or Pricing

Notwithstanding the provisions in the Federal Acquisition Regulation (FAR) dealing with dollar limitations for cost and pricing data, the Contractor shall submit, and shall require subcontractors to submit, cost or pricing data in accordance with Additional Provision 28, Escrow Bid Documents and Title 48, Code of Federal Regulations, Subpart 15.403 et seq. Such cost or pricing data shall be submitted on Attachment 17, the Cost Proposal form,

A. Except where the price is based on adequate price competition, established catalog or market prices of commercial items sold in substantial quantities to the general public or the price as set by law or regulation as these terms are defined in Title 48, Code of Federal Regulations, Subpart 2, Definitions of Words and Terms, and in the Contract, cost or pricing data shall be submitted under the following circumstances:

- 1) Prior to the award of any subcontract the total amount of which is expected to exceed \$100,000 when entered into;
- 2) Prior to the execution of any modification, or amendment of any Contract, subcontract or change order which involves aggregate increases or decreases in cost plus applicable profits which are expected to exceed \$100,000 over the Contract or subcontract term; or
- 3) Prior to the approval of any change order, amendment or cost reimbursable subcontract in excess of \$10,000.

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- B. Notwithstanding the exceptions set forth above, the Contracting Officer may at his/her option require cost or pricing data should it be his/her determination that to do so is in the best interests of the State.
- C. The Contractor shall maintain records of purchases made which identify the actual cost paid for items/services. In all cost reimbursable areas, the Contractor shall conduct itself as a prudent purchaser in a competitive marketplace. All purchases shall be subject to Provision 35, Inventory and Treatment of DHCS Property.
- D. The Contractor shall certify and shall require subcontractors to certify in a form satisfactory to DHCS that to the best of its knowledge and belief, the cost or pricing data submitted under this Provision is accurate, complete, and current as of the date of its submittal.
- E. The Contractor shall insert this entire Provision, including this paragraph, into each subcontract entered into under this Contract, be it cost reimbursable or non-cost reimbursable, which is expected when entered into to exceed \$10,000 over its term, except when the price thereof is based on adequate price competition, established catalog or market prices on commercial items sold in substantial quantities to the general public, or prices as set by law or regulation. These exemptions will apply subject to the discretion of the Contracting Officer based on the individual circumstances involved in a given subcontract.
- F. If the Contracting Officer determines that any price, including profit or fee, in any agreement, including, but not limited to, the Contract; any subcontract to the Contract; and/or any change order, amendment or waiver to the Contract, established or negotiated in connection with the Contract, or any cost reimbursable purchase, item, service or subcontract under this agreement was increased by any significant sums because the Contractor or any subcontractor furnished incomplete or inaccurate cost or pricing data not current as certified in the Contractor's or subcontractor's certification of current cost or pricing data, then such price or cost shall be reduced accordingly by the amount of any excess cost.
- G. Further, the given pricing agreement, including, but not limited to, the Contract; any subcontract to the Contract; any change order, amendment, or waiver to the Contract shall be modified in writing to reflect the reduction described in the preceding paragraph. Failure to agree on a reduction shall constitute a dispute concerning a question of fact within the meaning of disputes as defined in Special Terms and Conditions, D(F) #15.
- H. Because any given pricing agreement may be subject to reduction under this Provision by reason of incomplete or inaccurate cost or pricing data submitted in connection with certain subcontracts, the Contractor shall include a clause in each subcontract requiring the subcontractor to indemnify the Contractor as appropriate. Failure of the subcontractor to so indemnify the Contractor shall be grounds for DHCS to disapprove the proposed subcontract. It is expected that any subcontractor subject to such indemnification will require similar indemnification for incomplete or inaccurate cost or pricing data required to be submitted by its lower tier subcontractors.

22. Definition of Terms

Where there is a conflict in terminology, the parties shall first rely on the definitions provided within the Glossary of Terms (Exhibit K). In the absence of a definition in the Glossary of Terms and/or within the body of the Contract, the parties agree to use the usual and customary meaning of the term.

23. Delegation of Authority

- A. DHCS intends to implement the Contract through a single administrator, herein called the "Contracting Officer." The Director of DHCS shall appoint the Contracting Officer. The Contracting Officer may delegate his/her authority to act to an authorized representative through written notice to the Contractor.
- B. The Contractor shall designate a single administrator, herein called the Contractor Representative, who shall be located in the Contractor's Sacramento area facility. The Contractor Representative shall be the Contractor's Official responsible for managing the Contractor's operation. The Contractor Representative shall be empowered to legally bind the Contractor to all agreements reached with DHCS including, but not limited to, those related to the data processing center and services.
- C. The Contractor Representative may, through prior written notice to the Contracting Officer, delegate the authority to act as the Contractor's authorized representative. This written notice is due to DHCS five (5) State work days prior to the delegation to the representative. This delegation is also subject to written approval by DHCS. During the course of the contract, DHCS reserves the right to approve or disapprove, within thirty (30) calendar days, any replacement of the Contractor's Representative or an addition of a Contractor Representative Delegate. DHCS approval or disapproval will be conveyed to the Contractor in writing.

24. DHCS Approval of Deliverables

The Contractor shall submit all deliverables to the DHCS for review. Acceptance of a deliverable by DHCS does not constitute approval of said deliverable. For those deliverables that require approval pursuant to the Contract, DHCS shall provide its approval or disapproval in writing within ten (10) State work days. For each day the Contractor is late submitting a specific deliverable, or revised deliverable, the Department shall be permitted two (2) additional State Work days to review the deliverable. The Department may extend the deliverable review period(s) if there are staffing constraints, or the complexity or size of the deliverable warrants an extension. The Contractor shall allow for these turnaround times in its Project Management Plans for implementing or performing required activities and shall assume that the Department will require corrections or revisions to each deliverable. The Contractor shall have ten (10) State Work days to make corrections or revisions to unapproved deliverables. If the DHCS rejects a deliverable as unacceptable, it will provide written notification to the Contractor detailing reasons for its disapproval and specifying those items that, if added or modified, will cause the deliverable to be approved and specifying a time period for Contractor to make corrections. The Contractor shall make required corrections within the time period required by the Contracting Officer.

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- A. All written deliverables, as defined in the Glossary Exhibit K, including Contractor correspondence, received by DHCS after 2:00 PM Pacific Time will be date-stamped as received the next State work day.
- 1) The Contractor shall not be relieved from its obligation to provide deliverables, products or services that meet the specifications of the Contract, FI-Letters, change orders, Amendments, Systems Development Notices, Operational Instruction Letters (OIL), or any other official letter, or other request of DHCS; and
 - 2) If DHCS' basis for disapproval is that a deliverable is determined not to meet the designated specifications, and the Contracting Officer has not otherwise specifically and formally agreed to the variation from the designated specifications in writing by way of an FI-Letter or OIL, the Contractor shall remedy the discrepancy at no expense to DHCS. The Contracting Officer's approval of a deliverable shall not be viewed as constituting an agreement to vary specifications unless accompanied by an FI-Letter or OIL to this effect approving the variation and signed by the Contracting Officer.
- B. Failure of the Contractor to obtain written DHCS approval shall not relieve the Contractor of its obligation to perform Contract responsibilities or to provide required deliverables to the DHCS.

25. DHCS Ownership

The provisions of this article shall be incorporated in any subcontract which relates to the subject matter of this article.

- A. DHCS owns the CA-MMIS used by the Contractor or any subcontractor under the Contract. DHCS's ownership rights shall extend, but not be limited, to:
- 1) All computer programs including all software, except as noted below, that have been or will be designed, developed, or installed for use in the Contract by the Contractor, subcontractor or any other third party, including but not limited to: any and all object codes and source codes; any software developed for claims or TAR processing; data editing and auditing; creating and maintaining program and data history; report generation; manual data entry; Optical Character Recognition (OCR); computer media billing; status reporting; resource management, including assessment of employee accuracy; quality control; erroneous payment collection; or any enhancement. This includes all software on mainframe, servers, mini, personal or any other types of computers. The provisions of this paragraph do not apply to systems that relate solely to the Contractor's internal personnel, budget, or accounting processes, or other internal Contractor processes that do not directly or indirectly impact the Contractor's ability to fulfill its obligations under this Contract. The provisions do apply to any software related to the administration and support of the CA-MMIS.
 - 2) All data files and form designs;
 - 3) All documentation used in the performance of operations and support of the Contract, including but not limited to examiner manuals, claims processing

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- manuals, any reports generated by the Contractor, Medi-Cal policy manuals, and financial accounts manuals; and
- 4) All software and hardware that were purchased by DHCS through cost reimbursement.
- B. All Contractor proposed computer software for the performance of the Contract, wherein the Contractor is unable to transfer proprietary rights to DHCS because it does not hold such proprietary rights, must meet one of the following conditions:
- 1) Be available in the public domain.
 - 2) Be available at established catalog or market prices and licensed or sold to the general public in substantial quantities. An "established catalog or market price" must be printed, published, regularly maintained, current, readily available to a wide number of commercial customers, and a large number of the listed items are actually being sold at the listed prices. "Sold to the general public in substantial quantities" means the items in the commercial catalog or price list must actually be sold in large enough quantities to show that customers are actually paying those prices. To verify this, the Contractor shall assure that the company has a reasonable sales volume for its size; and prices listed are comparable to those shown in the price lists of other companies in the same business. The sales to the general public shall account for at least 50 percent of the company's total sales; and, at least 75 percent of the sales to the general public shall be at the catalog prices.
 - 3) Be otherwise approved by the Contracting Officer prior to its use under the Contract.
- C. All licenses are to be obtained in the Contractor's name but must include an option for transferability either to a subsequent contractor or to the State, at no additional cost. This transferability must be demonstrated in writing to the Contracting Officer within thirty (30) calendar days after assumption of operations. Where a license cannot be transferred, the Contractor shall, if requested by the Contracting Officer, assist DHCS in obtaining a license of its own, at the Contractor's cost.
- D. All software shall be designed to run on hardware that is sold to the general public in substantial quantities (as defined in Provision 25.B.2.).
- E. The Contractor shall not Contract with any outside organization for the purpose of processing claims, Treatment Authorization Requests (TARs), or any of the activities listed in Additional Provision 64, Waiver of Contract Provisions, using the CA-MMIS, without the express and prior written approval of the Contracting Officer. If DHCS agrees to license the CA-MMIS for such purposes, the Contractor will pay an appropriate license fee to DHCS for such use. The fee will be set by the Contracting Officer at a reasonable market price. If such license is approved, the costs associated with integrating the outside organization's process into the CA-MMIS will be borne 100 percent by the Contractor and will follow all SDN documentation and approval processes unless alternative documentation and approval processes have been previously approved in writing by the Contracting Officer.

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- F. The State of California owns all documents, communication, and materials received by the Contractor from providers and beneficiaries, all documents, materials, and reports generated through CA-MMIS processing, documents relating to administration and support of the CA-MMIS, and all documents, materials, and reports produced by the Contractor from any information, communication, or material received from or transmitted to the State.
- G. Any proposed open source by Contractor must use 3rd party commercially supported products by more than one supplier having an integrated package with CD-ROMs, documentation, and support contracts. Any proposed open source software must be developed with the source code freely available; anyone can use the software, and make changes to it as necessary. Any changes to the open source commercially supported software product must be made available back to the open source community and DHCS using a common methodology for change control unless otherwise approved by the contracting Officer in writing. All open source solutions must adhere to Exhibit E, Additional Provision 35, Inventory and Treatment of Department (DHCS) Property and, Additional Provision 47, Patent of Copyright Trademark and Trade Secret Infringement.

26. DHCS Right to Equitable Adjustment

Whenever DHCS is entitled to receive services, goods, equipment, facilities, or capabilities under the Contract, the cost for which is included in the bid price(s) or is cost reimbursement, and the Contractor fails to perform or provide the services, goods, equipment, facilities, or capabilities, or substitutes other services, goods, equipment, facilities, or capabilities, which are not fully equal to those required under the Contract and which are not acceptable to the Contracting Officer, DHCS may require the Contractor to correct its performance within a period of thirty (30) calendar days after written notice by the Contracting Officer to the Contractor specifying the deficiency, or such longer period as may be granted by the Contracting Officer. If the Contractor has failed to correct its performance during this period, the Contracting Officer at his/her option, may make an immediate and equitable adjustment to recover the costs of services, goods, equipment, facilities, or capabilities not provided or performed from administrative payments due to the Contractor, from the bid price(s) or may implement a cost-savings change order. Upon notification from the Contracting Officer, the Contractor shall fully document the change and submit this documentation together with certified cost and pricing data to the Contracting Officer in the time period requested.

This remedy shall be in addition to and not in lieu of any other remedy provided to DHCS in this Contract, or by law or equity.

27. Disputes and Appeals

A. Notification of Dispute

If the Contractor chooses to dispute any DHCS conduct (including actions, inactions and/or communications), it shall meet all requirements as set forth in the Special Terms and Conditions, Exhibit D(F) Provision 15, Dispute Resolution Process, of this Contract.

In addition to the above requirements, the Contractor's Notification of Dispute shall state, on the basis of the most accurate information then available to the Contractor, the following:

- 1) The dispute is raised pursuant to Exhibit E, Additional Provision, Provision 27, Disputes and Appeals of the Contract;
- 2) The date, nature, and circumstances of the conduct that is the subject of the dispute;
- 3) The names, phone numbers, function, and activity of each individual, Contractor, subcontractor, DHCS/State official or employee involved in or knowledgeable about such conduct;
- 4) The identification of any documents, and the substance of any oral communications involved in such conduct. Copies of all identified documents shall be attached;
- 5) The reasons the Contractor is disputing the conduct;
- 6) The cost impact to the Contractor directly attributable to the alleged conduct, if any, including:
 - a) What Contract line item(s) have been or may be affected by the alleged conduct;
 - b) What labor or materials or both have been or may be added/deleted by the alleged conduct;
 - c) To the extent practicable, what delay and disruption in the manner and sequence of performance, and effect on continued performance have been or may be caused by the alleged conduct; and
 - d) What adjustments to Contract price, delivery schedule, and other provisions are required or have been or may be affected by the alleged conduct.
- 7) If no cost impact is involved, the Contractor's desired remedy.

Notwithstanding the submission of a Notification of Dispute, the Contractor shall diligently continue performance of the Contract (including matters identified in the Notification of Dispute to the maximum extent possible).

B. Waiver of Claims

If the Contractor fails to submit a Notification of Dispute, supporting and substantiating documentation, and/or any additionally required information in the above manner, and within the time specified in the Disputes and/or Appeals Provisions, such failure shall constitute a waiver by the Contractor of all claims arising out of said conduct, whether direct or consequential in nature.

28. Escrow Bid Documents**A. Scope**

- 1) The Contractor submitted one (1) copy of all documentary information developed by the Contractor in preparation of procurement bid prices for this Contract. Each subcontractor, whose total subcontract price exceeds the lesser of five percent (5%) of the total Contract price, or two hundred thousand dollars (\$200,000), provided a separate copy of all documentary information developed by the subcontractor in preparation of procurement bid prices for this Contract, submitted with those of the Contractor. This material is hereinafter referred to as “Escrow Bid Documents.” The Escrow Bid Documents will be held in escrow for the duration of the Contract.
- 2) Escrow Bid Documents will be used to assist in, the following circumstances:
 - a) The negotiation for the settlement of claims;
 - b) The resolution of disputes;
 - c) Change Order pricing;
 - d) In event that additional services of the Contractor are at a level unanticipated by the original procurement RFP;
 - e) In event that fewer Contract services are required (e.g., a significant reduction in the Medi-Cal program);
 - f) To support the pricing structure in event a regulatory agency finding where examination of the pricing structure is required.
 - g) To verify the pricing structure in Contractor’s bid price.
- 3) The Contractor agrees, as a condition of the Contract, that the Escrow Bid Documents constitute all of the information used in preparation of the procurement bid, and that no other procurement bid preparation information will be considered in resolving claims. Nothing in the Escrow Bid Documents shall change or modify the terms or conditions of the Contract.

B. Ownership and Confidentiality

The Escrow Bid Documents are, and will always remain, the property of the Contractor, subject only to joint review by DHCS and the Contractor.

DHCS stipulates and expressly acknowledges that the Escrow Bid Documents constitute trade secrets, and are proprietary and confidential. This acknowledgment is based on DHCS’s express understanding that the information contained in the Escrow Bid Documents is not known outside the Contractor’s business, is known only to a limited extent and only by a limited number of employees of the Contractor, is safeguarded while in the Contractor’s possession, is extremely valuable to the Contractor, and could be extremely valuable to the Contractor’s competitors by virtue of it reflecting the Contractor’s techniques of operation. DHCS acknowledges that

the Contractor expended substantial sums of money in developing the information included in the Escrow Bid Documents and further acknowledges that it would be difficult for a competitor to replicate the information contained therein. DHCS further acknowledges that the Escrow Bid Documents and the information contained therein are made available to DHCS only because such action is an essential element of the Contractor's responsibility. DHCS acknowledges that the Escrow Bid Documents include a compilation of information used in the Contractor's business, intended to give the Contractor an opportunity to obtain an advantage over competitors who do not know of or use the contents of the documentation.

DHCS agrees to safeguard the Escrow Bid Documents and all information contained therein, against disclosure to the fullest extent permitted by law.

C. Format and Content

- 1) Escrow Bid Documents shall be adequate to enable complete understanding and proper interpretation for their intended use. Escrow Bid Documents shall clearly itemize the estimated costs of performing the work, for each level of work specified in the Contract (e.g., all Takeover activities, each Hourly Reimbursed Special Group, each enhancement, etc.). Items shall be separated into sub-items as required to present a complete and detailed cost estimate and allow a detailed cost review. The Escrow Bid Documents shall include all labor (specifying hourly rates, salaries or percentage of salaries apportioned to activities), equipment, machine hours, calculations of rate of production and progress, copies of quotations from subcontractors and suppliers, and memoranda, narratives, consultant's reports, add/deduct sheets, and all other information and elements used by the Contractor to arrive at the prices contained in the Contract. Estimated costs shall be broken down into the Contractor's usual estimate categories such as direct labor, repair labor, material, equipment, equipment operations, expendable materials, materials, and subcontract costs as appropriate. Plant and equipment, direct material cost, any fixed cost, mixed cost, variable cost and overhead/indirect costs shall be detailed in the Contractor's usual format. The Contractor's allocation of plant and equipment, indirect cost contingencies, markup and other items shall be included.

- 2) All costs shall be identified and fully explained. For items and sub-items amounting to less than ten thousand dollars (\$10,000), estimated unit costs are acceptable without a detailed cost estimate, providing that labor, equipment, materials, and subcontracts, as applicable, are included, and provided that indirect costs, contingencies, and markup, as applicable, are allocated.

The breakdown of each cost element shall be appropriate to the element being identified. The price/cost of each element shall be clearly stated; and each cost identified as either a variable, fixed or mixed cost.

- 3) Fixed costs shall identify the asset(s) and state the percentage of usage that applies to the cost element. For example, if the building for the telephone center contains both the telephone center and offices for the management staff of the project, with the telephone center using 70% of the floor space and the management staff using 30% of the floor space, then the fixed cost element of

the bid price for the telephone center should show 70% of the building as a fixed price element. Additionally, in the example, the remaining 30 % of the building cost would be shown in the overhead cost of the organization.

- 4) All major fixed assets shall include discussion of what effect either the contraction or expansion of the Contract would have on fixed assets; a discussion of how fixed cost might be reduced in the event of a contraction and should identify what volume of expansion might require additional fixed asset(s).
- 5) Any significant asset identified by the Contractor that is shared by/with any project outside the scope of work of this Contract shall be clearly documented and shall demonstrate that the cost apportioned to the CA-MMIS is appropriate. "Significant asset" shall include any shared asset where the cost represents 25% or more of the cost of the total Contract amount for the year; and if the total cost to the Contract is greater \$100,000.
- 6) Fixed assets that would normally be classified as part of overhead cost shall not be reported. For example, the fixed cost associated with payroll billing might have expenses that would meet the greater than \$100,000 clause, however, as a normal and customary expense of overhead this expense shall not be identified separately.
- 7) Corporate overhead shall be based on a rational distribution of corporate overhead expenses; and shall not be disproportional to the Contract.
- 8) Allocated expenses shall not exceed the total actual expense of the allocated expense (allowing for immaterial rounding issues).
- 9) All assumptions shall be clearly stated. The level of detail used to establish all cost elements shown shall be relevant to the significance of the cost identified and reflective of the Contractor's estimated costs. A narrative of facts and information shall be included in the Escrow Bid Documents as required cost justification. The narratives shall include explanation of the general structure, business practices and assumptions made for each cost; and include or identify any source documentation required to support the narrative.
- 10) Procurement bidding materials provided by DHCS shall not be included in the Escrow Bid Documents unless needed to comply with the requirements of this Provision.

D. Submittal

- 1) The Escrow Bid Documents shall be submitted by the Contractor in a sealed container. The container shall be clearly marked on the outside with the Contractor's name, date of submittal, procurement identification, and the words "Escrow Bid Documents."
- 2) The Escrow Bid Documents shall be accompanied with an index to inventory the contents of the submittal, and the Bid Documentation Certification (Exhibit

E-1) signed by an individual authorized by the Contractor to execute the Contract.

E. Storage

The Escrow Bid Documents shall be placed in escrow for the life of the Contract, in an institution acceptable to both DHCS and the Contractor. The cost of storage shall be the responsibility of the Contractor.

F. Examination after Award of the Contract

DHCS requires that a narrative of facts and information be included in the Escrow Bid Documents as required cost justification. While these issues may be explained in the normal course of preparing the Escrow Bid Documents, DHCS wishes that these points are discussed and explained in writing. In addition to any other information already supplied, the narratives are to explain the general structure, business practices and assumptions made in preparing the Cost Proposal, as applicable. Include or identify as provided any source documentation required to support the narrative.

DHCS reserves the right to examine the Escrow Bid Documents (in conjunction with the Proposer that is awarded the Contract) for compliance with the reporting requirements associated with those documents. The Contracting Officer and the Proposer that is awarded the Contract shall each designate, in writing to the other party and a minimum of five (5) business days prior to examination, representatives who are authorized to examine the Escrow Bid Documents. No other person shall have access to the Escrow Bid Documents.

Ten (10) days after Contract Execution Date, the Contractor must review the Escrow Bid Documents with the DHCS designated representative, prior to placing the documents in escrow. This is to assure conformance with all requirements and to verify completeness of the information included. This review should be considered a condition of Contract acceptance. Should the reviewed documents fail to meet a level of acceptance agreeable to DHCS, DHCS reserves the right to review additional Escrow Bid Documents up to and including all Escrow Bid Documents submitted. If material deficiencies are noted, including the level of detail provided, the Contractor shall be required to correct all deficiencies to the satisfaction of DHCS within ten (10) business days. Failure to correct the deficiencies shall be deemed grounds to find the Contractor in breach of Contract at which time DHCS will invoke its right to collect on the Letters of Credit and award the Contract to the second highest scoring proposal.

- 1) The Escrow Bid Documents shall be examined by both DHCS and the Contractor, at any time deemed necessary by either DHCS or the Contractor, to assist in the actions defined in Exhibit E, Additional Provisions, section 28 A.2. Examination of the Escrow Bid Documents is subject to the following conditions:
- 2) As trade secrets, the Escrow Bid Documents are considered by DHCS to be proprietary and confidential.

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- 3) The Contracting Officer and the Contractor shall each designate, in writing to the other party and within a minimum of five (5) State work days prior to examination, representatives who are authorized to examine the Escrow Bid Documents. No other person shall have access to the Escrow Bid Documents.
 - 4) Access to the Escrow Bid Documents will take place only in the presence of duly designed representatives of both the Contracting Officer and the Contractor.

G. Final Disposition

The Escrow Bid Documents shall be returned to the Contractor at the end of the life of the Contract or at the conclusion of any dispute between Contractor and DHCS, whichever date is later.

29. Federal Financial Participation and Time Study Governing Law

A. Federal Financial Participation

- 1) The CA-MMIS complies with the federal MMIS requirements as described in Title 42, United States Code, Section 1396b(r), and regulations adopted pursuant thereto. Section 1396b(r), its associated regulations, and the guidelines to these regulations are made a part of the Contract by this reference. In addition to the federal requirements referenced above, the CA-MMIS also provides enhancements to the federal MMIS. The Contractor is required to support these enhancements, as provided in the Contract.
- 2) The Contractor shall also comply with the State Medicaid Manual, Part 11. If through the negligence, error or omission of the Contractor or subcontractors, federal approval is not granted or maintained because of failure to meet federal requirements, the Contractor shall be liable to the State for the difference between the amount of the federal matching funds which would have been provided under Section 1396b(a)(3) and Section 1396b(r) (for example, ninety percent/ten percent (90%/10%) split for design, development and installation and seventy-five percent/twenty-five percent (75%/25%) split for operating cost) and the matching funds actually provided. The Department will ascertain if the cause for the reduced funding is the responsibility of the Contractor. In the event that the cause of the loss of federal matching funds is shared, the Contracting Officer shall determine that portion of the failure caused by the State. The Contracting Officer shall set the financial responsibility, proportionately, for the federal matching funds not granted the State between the Contractor and the State. Any such contract liability will be offset from payments to the Contractor from the State.
- 3) The Contractor may be required to develop Advanced Planning Documents (APD) for purposes of qualifying enhancements and/or modifications to the system for increased FFP. If the Center for Medicare and Medicaid Services (CMS) does not approve the maximum allowable FFP due to problems with any APD written by the Contractor or supporting documents supplied by the Contractor (e.g., information is not complete; APD was not submitted timely; etc), the Contractor shall be liable for the monetary difference between the

maximum available FFP and the actual amount of FFP allowed. The Department will ascertain if the cause for the reduced funding is the responsibility of the Contractor. If determined to be Contractor-caused, the Contractor's enhancement payment shall be reduced by the dollar amount of FFP reduced by CMS. The total amount for which the Contractor may be held liable will not exceed twenty-five million dollars (\$25,000,000) per APD.

B. Time Study

The Contractor shall perform time studies (or alternate method) of all personnel working in areas specified during Design, Development, and Implementation (DDI), to include Provider Relations, Telephone Service Center, the Printing and Distribution of Publications functions, and bundled rate areas. The Contractor will be required to complete two-week time studies (covering a complete pay period) on a quarterly basis. In order to maintain statistical integrity, it is necessary to ensure different two-week time periods are selected throughout the fiscal quarters of each fiscal year during the life of the Contract. The Contractor shall utilize the data from these four studies to compile a single report to be provided to the Department no later than August 1 of the subsequent fiscal year. The report will be based on a weighted average of total hours and detail the exact FFP percentages for the entire year, to be used for the following year. DHCS will provide to the Contractor the appropriate FFP percentages to be used in this time study no later than April 1st annually. In the event a Contractor assumes claims operations after the first quarter of the fiscal year, the Contractor will obtain the previous quarters' information regarding that fiscal year from the prior Contractor and utilize this data in composite with their quarters' data to compile the report for that fiscal year. Similarly, the Contractor will pass applicable quarterly report data to any subsequent Contractor at the termination of this Contract.

The purpose of the time study is to determine which, if any, activities being performed by the Contractor's personnel qualify for ninety percent (90%), seventy-five percent (75%), fifty percent (50%) FFP, or other percentages of FFP. The Contractor shall develop a matrix showing each employee classification, listing all activities performed and a time survey document that emulates the matrix. DHCS shall be responsible for attributing the appropriate FFP and General Fund percentage to each classification.

In regard to the Print and Distribution Center, the following instructions shall be followed when preparing the time study. The Contractor shall develop a time study listing all activities to be performed for each classification of employee in the Print and Distribution Center. This time study shall determine which activities are directly related to distribution of claim forms versus non-claim forms related activities of K-Print (sub-invoices of K-Cost). An Excel spreadsheet shall be run by the Contractor for each Cost Reimbursement invoice to split out form versus non-form related expenses for Print and Distribution Center activities. Form related expenses shall be claimed at 75 percent (75%) FFP while non-form related expenses shall be claimed at 50 percent (50%) FFP.

30. Financial Reporting Requirements

The Contractor shall provide the Contracting Officer with the information described below throughout the life of the Contract.

A. Quarterly Information

As soon as available, and in any event not later than forty-five (45) calendar days after the close of each quarter of the Contractor's fiscal year, or for such other period as the Contracting Officer may authorize in writing, the Contractor shall submit:

- 1) Financial statements prepared in accordance with generally accepted accounting principles and applicable state & federal regulations, prepared in a format consistent with the certified financial reports furnished by the Contractor, (unless the Contractor receives advance written approval from the Contracting Officer to vary from that format, and such variance is adequately noted in the Contractor's report under this Provision). Such financial statements shall include:
 - a) A balance sheet for the Contractor as of the closing date of such quarter;
 - b) An income statement or statement of operations for such quarter;
 - c) A statement of changes in financial position for such quarter;
 - d) A calculation of the Contractor's consolidated tangible net worth prepared in accordance with the requirements of Additional Provision 41, Minimum Financial Criteria;
 - e) Sufficient and appropriate notes to provide adequate disclosure of, at a minimum, the following:
 - i. The provision for incurred and unreported claims and an explanation of the method of calculating such provision;
 - ii. Accounts and notes receivable from officers, directors, owners, or affiliates, including the name of the debtor, nature of the relationship, and nature of the receivable and its terms;
 - iii. Forgiven debts or obligations during the period of the financial statement, including the creditor's name and its terms; and
 - iv. Fraud and abuse payments recovered.
- 2) Copies of all financial statements and reports the Contractor generally makes available, during the quarter, to any of its guarantors, sureties, bonding companies or insurance carriers or has been required to file with the Securities and Exchange Commission or similar institutions, and regulatory agencies of the state and federal government; and
- 3) A signed statement by the Contractor's Account Chief Financial Director certifying that the data provided is current, accurate, and complete; in accordance with generally accepted accounting principles; and in compliance with the established financial criteria and reporting requirements under the Contract.

B. End Of Accounting Year Information

As soon as available, and in any event within ninety (90) calendar days after the end of each Contractor's fiscal year, or for such other period as the Contracting Officer may authorize in writing, the Contractor shall submit:

- 1) Annual financial statements, prepared in accordance with generally accepted accounting principles on a basis consistent with the prior year or years, including the auditor's letter to management on internal controls, accompanied by the report, certificate, or opinion of an independent certified public accountant;
- 2) Copies of proxy notices, financial statements, and reports the Contractor may make or has made available to any of its security or policyholders or has been required to file with the Securities and Exchange Commission or similar institutions;
- 3) If the report, certificate, or opinion of the independent certified public accountant is in any way qualified, the Department may require the Contractor to take such action as the Department deems appropriate to permit an independent certified public accountant to remove such qualification from the report, certificate, or opinion.

C. Other Information

The Contractor shall provide other such financial information at the request of the Contracting Officer.

D. Required Copies

The Contractor shall provide the State with five (5) copies of each financial report required by this Provision.

E. Requests For Extension

Approval of Contractor requests for extension of time limits for the submission of Contractor financial reports required under the Contract shall be obtained by the Contractor in writing from the Contracting Officer. Oral requests shall not be approved by DHCS.

F. Centers for Medicare and Medicaid Services (CMS) Audits

For the fixed-price portions of the Contract, the Contractor shall provide to the Department and to CMS, for review during a CMS audit, a report that includes an annual breakdown of direct labor expenses by position, summarized by Contractor organization (e.g., provider relations) and total cost. To assist in the audit, the Contractor shall also provide duty statements for those positions requested by the auditor.

G. Additional Requirements

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- 1) Whenever, pursuant to the Contract, a financial statement or other report is required to be certified or be accompanied by the opinion of a certified public accountant, such accountant shall be independent of the Contractor, and shall be qualified in accordance with the Code of Federal Regulations Title 17, Section 210.2-01 et. seq.
 - 2) Pursuant to the California Code of Regulations Title 28 Article 2 Section 1300.45 (q), the term "generally accepted accounting principles," when used in regard to financial statements, assets, liabilities, and other accounting items, means generally accepted accounting principles as used in business enterprises organized for profit. Accordingly, Financial Accounting Standards Board Statements, Accounting Principles Board Opinions, accounting research bulletins, and other authoritative pronouncements of the accounting profession shall be applied in determining generally accepted accounting principles unless such statements, opinions, bulletins, and pronouncements are inapplicable. Section 510.05 of the American Institute of Certified Public Accountants (AICPA) Professional Standards, in and of itself, shall not be sufficient reason for determining inapplicability of statements, opinions, bulletins, and pronouncements.
 - 3) Whenever the financial statements or reports required pursuant to the Contract are to be reported upon or certified by an accountant other than the accountant certifying the Contractor's most recent filing, the Contractor shall furnish the Department with a separate letter stating whether in the eighteen (18) months preceding the engagement of the new accountants there was any disagreement with the former accountants on any matter of accounting principles or practices, financial statement disclosure or auditing procedure, which such disagreement if not resolved to the satisfaction of the former accountants would have caused the accountants to make reference to the subject matter of such disagreement in his opinion or report. This letter must be verified by a principal officer of the Contractor. The Contractor shall also request the former accountants to furnish them with a letter addressed to the Department stating whether the accountants agree with the statements contained in the letter of the Contractor and, if not, stating the respects in which they do not agree. The notification by the Contractor along with the former accountant's letter, if necessary, must be furnished to the Department within forty-five (45) calendar days of the engagement of the new accountants.
 - 4) The Department may reject any financial statement, report, certificate, or opinion (other than certified financial reports) submitted to the Department under the Contract by notifying the Contractor of its rejection and the cause thereof. Within thirty (30) calendar days after the receipt of such notice, or such other period as the Contracting Officer may allow the Contractor shall correct the cause of DHCS' rejection and submit an amended report.
 - 5) If any report(s) required under the Contract indicate noncompliance with established financial criteria, a written plan to correct such noncompliance shall be submitted by the Contractor with the report. The plan shall include a time schedule for the corrective activities or actions specified in the plan.

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- 6) The Contracting Officer shall have the authority to accept the corrective action plan and its time schedule as proposed by the Contractor, or to reject either the proposed plan or the time schedule for its implementation and completion as unreasonable or unacceptable. Where the Contracting Officer rejects the corrective action plan and/or the proposed time schedule, the Contracting Officer shall notify the Contractor in writing of the reason(s) for such rejection. The Contractor shall have five (5) State work days from receipt of such notice to submit an amended corrective action plan and/or time schedule to the Contracting Officer.

31. Guaranty Provisions

If the Contractor is a subsidiary of a corporation or other legal entity, the full and prompt performance of all covenants, Additional Provisions, and agreements resulting from this Contract for the life of the Contract shall be guaranteed by that entity in the Contractor's chain of ownership, which is publicly traded. This entity shall be known as the Contractor's parent corporation for purposes of the Contract.

The guaranty shall, at a minimum, meet the following requirements. It shall:

- A. Be made to DHCS;
- B. Be signed by an official authorized to bind the guarantor organization;
- C. Accept unconditional responsibility for all performance and financial requirements and obligations of the Contract including, but not limited to, maintenance of Tangible Net Equity (TNE) and payment of liquidated damages;
- D. Recite that "for good and valuable consideration, receipt of which is hereby acknowledged," the guarantor is making the guaranty;
- E. State that the guarantor stipulates that if the Contract is ultimately awarded to the subsidiary, that DHCS will so award in reliance upon the guaranty;
- F. State that the undersigned Corporate Officer warrants:
 - 1) That he or she has personally reviewed all pertinent corporate documents, including but not limited to articles of incorporation, bylaws, and agreements between the parent and subsidiary; and
 - 2) That nothing in these documents in any way limits the capacity of the parent to enter into the instant Contract of guaranty;
- G. Include the following provisions:

"DHCS need not take any action against the Contractor, any other guarantor, or any other person, firm or corporation or resort to any security held by it at any time before proceeding against the GUARANTOR.

Further, GUARANTOR hereby waives any and all notices and demands which may be required to be given by any other statute or rule of law and agrees that its liability

hereunder shall be in no way affected, diminished, or released by any extension of time, forbearance, or waiver which may be granted to the Contractor, its successor or assignee, and that this Guaranty shall extend to and include all future amendments, modifications, and extensions of the Contract and all future supplemental and other agreements with respect to matters covered by the Contract which DHCS and Contractor may enter into, with or without notice to or knowledge of GUARANTOR, but GUARANTOR shall have the benefit of any such extension, forbearance, waiver, amendment, modification, or supplemental or other agreement; it being the purpose and intent of the parties hereto that the obligations of GUARANTOR hereunder shall be co-extensive with, but not in the excess of, the obligations of Contractor, its successor or assignee, under the Contract.”;

H. Be presented in terms, which DHCS, in its sole discretion, determines shall, as a whole; adequately establish the Contractor's financial responsibility; and

I. Include the following provision:

"GUARANTOR agrees that the guaranty shall continue in full force and effect despite any change in the legal or corporate status of the subsidiary including but not limited to its sale, reorganization, dissolution or bankruptcy."

32. Health Insurance Portability and Accountability Act (HIPAA)

While performing the requirements set forth in the Scope of Work, Exhibit A, of this RFP, the Contractor and Subcontractor(s) shall be responsible for taking into account the requirements of the Health Insurance Portability and Accountability Act (HIPAA) of 1996 (reference Public Law 104-191, dated August 21, 1996). The Contractor and Subcontractor(s) shall also be compliant with the requirements reflected in Exhibit H, the HIPAA Business Associate Addenda to this RFP

33. Indemnification by Contractor

The Contractor shall indemnify the State for any claims and losses experienced by the Department, including provider claim payments, resulting from a court order in which the Contractor has failed to perform its contractual obligation to provide an expert witness in court as specified in this Contract.

The Contractor shall reimburse the State for any other Contractor-caused penalty assessments against the State pursuant to Title 1, Division 3.6, Part 3, Chapter 4.5 of the Government Code (Government Code Section 927 et seq.) and for any Contractor-caused interest payment assessments against the State pursuant to Welfare and Institutions Code Section 14171.

This Additional Provision shall be in addition to, and not in lieu of, the Indemnification requirements contained in Exhibit C.

In the event of a conflict between the provisions of paragraph 1 of the Standard Agreement, (RFP Exhibit A) and this Provision, or where this Provision is more comprehensive, the provisions of this Provision shall govern.

34. Insurance and Bonding

This Provision sets forth the requirements for insurance and fidelity bonding under the contract.

As used in this Provision, a third party carrier means an insurance company and/or bonding company licensed to provide the required lines in the State of California and in the amounts required by the Contract.

A. Insurance

- 1) Evidence of the insurance coverage required by paragraph 3 below must be submitted to the Contracting Officer prior to the Contract Effective Date (CED).
- 2) If the required insurance is not to be provided by a third party carrier, the Contracting Officer must approve, in writing, any proposed alternative coverage prior to its use under the Contract. Any request to use coverage other than standard insurance from a third-party carrier must be submitted to the Contracting Officer in writing within ten (10) calendar days after the Notice of Intent to Award the Contract. The request shall clearly and fully set out the arrangements proposed and how such arrangements will fully comply with RFP requirements. If this request is not approved by the Contracting Officer, required insurance and bonding from a third party carrier must be obtained and evidence of coverage submitted to the Department within fifteen (15) calendar days of the Contracting denial of approval.
- 3) The Contractor shall provide and maintain, and shall require its subcontractors to provide and maintain, the following insurance during the life of the Contract:
 - a) Worker's Compensation Insurance in accordance with the Statutory requirements of the State where work is performed; and
 - b) Comprehensive General and Automobile Liability insurance with minimum limits of \$5 million per occurrence for bodily injury and property damage liability combined.
- 4) The State of California shall be named as an additional insured on the policy of insurance, with the exception of the Worker's Compensation Insurance, but only insofar as the activities of the Contract are concerned. The Department will not be responsible for any premiums or assessments on the policy or policies.
- 5) The certificate of insurance must include the following provisions:
 - a) The insurer will not cancel the insured's coverage without thirty (30) calendar days prior written notice to DHCS;

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- b) The State of California, its officers, agents, employees, and servants are included as additional insured, but only insofar as the operations under this Contract are concerned; and
 - c) DHCS will be notified of any failure by the Contractor to pay premiums, or any other change in the status or scope of the required coverage.
- 6) Contractor agrees that the above insurance shall be in effect at all times during the life of this Contract. In the event said insurance coverage expires at any time during the life of the Contract, Contractor agrees to provide at least thirty (30) calendar days prior to said expiration date, a new certificate of insurance evidencing insurance coverage as provided for herein for not less than the remainder of the life of the Contract, or for a period of not less than one (1) year.

New certificates of insurance are subject to the approval of the DHCS. In the event the performance of the Contract is deemed unacceptable by the State for any reason, the State may, in addition to any other remedies it may have, terminate the Contract.

B. Bonding

- 1) Evidence of the fidelity bond or other security required by paragraph 3 below must be submitted to the Contracting Officer prior to the first day of Takeover.
- 2) If the required bonding is not to be provided by a third-party carrier, the Contracting Officer must approve, in writing, any proposed alternative coverage prior to its use under the Contract. Any request to use coverage other than standard insurance from a third-party carrier must be submitted to the Contracting Officer in writing within ten (10) calendar days after the notice of intent to award the Contract. The request shall clearly and fully set out the arrangements proposed and how such arrangements will fully comply with the RFP requirements. If this request is not approved by the Contracting Officer, required insurance and bonding from a third party carrier must be obtained and evidence of coverage submitted to DHCS within fifteen (15) calendar days of the denial of approval.
- 3) A fidelity bond or other security shall be maintained by the Contractor and subcontractors for at least five million dollars (\$5,000,000) per loss covering every employee except those classifications of employees as the Contracting Officer may exempt upon proper justification and request by the Contractor. The fidelity bond or other security shall be maintained by the Contractor and subcontractors in a form satisfactory to DHCS and must include the following conditions:
 - a) Loss, if any, under the bond shall be payable to DHCS.
 - b) Any bond shall provide for thirty (30) calendar days prior written notice to DHCS of intent to cancel or to make any other change, including, but not limited to the status, coverage or scope of the required bond or of the Contractor's failure to pay premiums.

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- c) DHCS shall not be responsible for any premiums or assessments on the policy.
 - d) The policy shall not provide exclusions for the acts of officers.

35. Inventory and Treatment of DHCS Property

In addition to the provisions regarding DHCS property set forth in Special Terms and Conditions, Exhibit D(F) # 4, Equipment Ownership / Inventory / Disposition, the Contractor shall ensure:

- A. Title to all property furnished by DHCS or furnished under the cost reimbursement provisions of the Contract shall remain with DHCS.
- B. Any property of DHCS furnished to the Contractor or any subcontractor shall, unless provided herein, or approved by the Contracting Officer, be used only for the performance of the Contract.
- C. The Contractor shall maintain an accurate ongoing inventory of all Department-owned equipment, whether it is intended for State-use or Contractor use, acquired through the takeover phase of this Contract or purchased through cost reimbursement. The Contractor shall utilize a COTS electronic inventory bar-coding system, which shall identify, log and track all assets by equipment type. The electronic bar-coding system shall be directly connected to the system from any location where Department-owned equipment is located. All features of the COTS system must be enabled for use by the Department.
 - 1) The system must record the following information for each piece of equipment:
 - a. Asset Tag Number
 - b. Asset type
 - c. Model
 - d. Manufacturer
 - e. Serial Number
 - f. Site
 - g. Location
 - h. Whether the equipment is owned or leased
 - i. If leased, the lease expiration date and terms
 - j. The owner/lessee (DHCS or Contractor)
 - k. The CA-MMIS subsystem(s) or business function it supports
 - l. The quantity
 - m. New or used (age)
 - n. Responsible contact for information
 - o. The date of last audit.
 - p. Cost
 - q. Useful life expectancy
 - r. Equipment specifications
 - s. Application subsystem where equipment is provisioned

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- 2) As required, a legend shall be included with the inventory deliverable. The legend will define all aliases for the site, location, and any other areas where aliases are used.
 - 3) The system shall have the capability of tracking transfers of inventory between all office locations involved with the CA-MMIS Contract, to include the Contractor's facilities and all State offices, including field offices. The system shall also have the capability of developing reports, sorted by type of equipment, location, and date acquired. The system shall have the capability of comparing previous inventory reports with current inventory reports. If discrepancies are determined, the Contractor shall report to DHCS the specific reason for the discrepancies. And system staff shall have the ability to export all recorded information for each piece of equipment into an Excel spreadsheet. Complete inventory reports shall be provided to DHCS within thirty (30) calendar days of the close of each quarter of the State fiscal year.
 - 4) If, during the course of the Contract, DHCS determines to replace the Contractor's inventory tracking system with a different product or method, DHCS will pay for all necessary equipment costs for replacement of the system through Cost Reimbursement.
- D. The Contractor shall be responsible for any loss or damage to property of DHCS which results from the negligence or willful acts of the Contractor or any subcontractor or which results from the failure on the part of the Contractor or any subcontractor to maintain and administer that property in accordance with sound management practices. Additionally, the Contractor shall be responsible for any consequential damage to DHCS stemming from the loss or destruction of Department property which is caused, in whole or in part, by the Contractor's (or a subcontractor's) willful act(s) or gross negligence. Further, the Contractor shall provide for alternative services/equipment/facilities to fully meet its contractual obligations should Department-owned property be lost or destroyed through the actions or inactions of the Contractor or its agents. Provision of the alternative resources of services/equipment/facilities shall be made by the Contractor with no additional reimbursement or forgiveness from the State in terms of money or time. The Contractor shall not be held liable for normal wear and tear as defined by the State.
- E. Upon the Contractor becoming aware, while exercising reasonable diligence, of the happening of loss of, destruction of, or damage to any DHCS property, held or used either by it or by a subcontractor, the Contractor shall promptly notify DHCS and shall take all reasonable steps to protect that property from further damage.
- F. The Contractor shall surrender to DHCS all property of DHCS held either by it or by a subcontractor prior to settlement, upon completion or termination of the Contract.
- G. The Contractor shall keep all equipment in the system in good condition and repair, and shall not commit any waste thereof or permit anything to be done that may materially impair the value thereof. The Contractor shall use such equipment only in the ordinary course of its performance hereunder and shall not permit such equipment to be used in violation of any applicable law, regulation or policy of

insurance. The Contractor shall ensure that any subcontractors also meet these requirements.

36. Letter of Credit

The Contractor shall procure and maintain irrevocable and unconditional letter(s) of credit (LOC) to secure the State against nonperformance by the Contractor. There shall be three (3) irrevocable and unconditional LOCs. The irrevocable and unconditional LOCs shall be for the following amounts and terms:

- A. For performance of the requirements set forth in Exhibit A, Attachment I of this Contract (Takeover), an irrevocable and unconditional LOC for twenty percent (20%) of the Takeover bid amount, to include all Takeover Phase bid amounts bid sheet 16-1, and expansion item bids bid sheet 16-2. This LOC shall be in effect on the Contract Effective Date. The Contractor can cancel this LOC after receipt of written approval from the Contracting Officer of the final Takeover deliverable.
- B. For performance of the requirements set forth in Exhibit A, Attachment II and Exhibit A, Attachment VI, Section 5 of this Contract (Operations), an irrevocable and unconditional LOC for ten million dollars (\$10,000,000). This LOC shall be in effect on the Assumption of Operations date, and shall be held for the entire life of the Contract.
- C. For performance of the requirements set forth in Exhibit A, Attachment VI of this Contract (Replacement Services), an irrevocable and unconditional LOC for ten percent (10%) of the total Replacement Services bid amount, which shall be the total price of bid sheets 16-17A, 16-17B and 16-17C. This LOC shall be in effect on the Assumption of Operations date. The Contractor can cancel this LOC after receipt of written notification from the Contracting Officer of the State's receipt of certification of the Replacement system from CMS.

The Contractor shall notify the Contracting Officer in advance if it is contemplating changing the financial institution that issued the LOCs. Any new LOC, which shall meet all required conditions applied to the LOC being replaced, shall be transmitted to the Contracting Officer before the existing LOC expires and be effective on or before the date of expiration of the existing LOC.

37. Liability for Overpayment

The Contractor is liable to the Department for unrecoverable overpayments and any associated administrative expenses occurring in any fiscal year up to a maximum amount of ten percent (10%) of the annual Operations price paid to the Contractor under this Contract during the same fiscal year. Unrecoverable overpayments shall be defined as:

- A. Those erroneous payments where collection has been delayed 120 days because of negligence or inaction by the Contractor;
- B. Those erroneous payments caused by the Contractor where the Department and the Contractor are unable to collect from the provider; or

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- C. Those erroneous payments for claims processed through the CA-EV/CMS system where the beneficiary's eligibility would preclude reimbursement for services through CA-MMIS, e.g., the beneficiary is enrolled in a managed care plan.

38. Liquidated Damages

A. General

It is the policy of the California Legislature to use the liquidated damage provisions in State contracts, as shown by Civil Code, Section 1671 (b), Public Contract Code, Section 10226, and 13 California Law Revision Commission Reports 1740 and 1741. The parties agree that if the Contractor does not provide or perform the requirements referred to or listed in this Contract, damage and harm to the State will result.

- 1) The maximum amount of liquidated damages payable by the Contractor over any twelve (12) month period is ten million dollars (\$10,000,000).
- 2) In the event that multiple Contractor failures subject the Contractor to liquidated damages in multiple subsections of this provision, DHCS will be entitled to assess the highest single liquidated damage only.
- 3) For the amount of any such liquidated damages, DHCS shall have the right to reduce/offset the amount of payment due under this Contract to the Contractor or require direct payment from the Contractor to DHCS. The parties agree that the damages provided for under this Provision are difficult to establish and the Contractor shall pay the amounts set forth in this Provision of the Contract as liquidated damages and not as a penalty.
- 4) Liquidated damages will not be assessed if the Contractor's delay or failure to timely perform its obligations was caused by factors beyond the reasonable control and without any material error or negligence of the Contractor, its Staff or Subcontractors.
- 5) If a Contractor delay or failure to timely perform an obligation under the Contract was caused, in part, by a DHCS failure to perform an obligation under the Contract, liquidated damages will be apportioned in an amount proportionate with the Contractor's culpability, as determined by the Contract Officer, for the delay or failure to timely perform.

Nothing in this provision shall be construed as relieving the Contractor from performing any other Contract duty not listed herein, nor is the State's right to enforce or seek other remedies for failure to perform any other Contract duty hereby diminished.

B. Takeover Phase Requirements

The Contractor shall complete all Takeover preparations and shall timely start the assumption of CA-MMIS Operations as required in Exhibit A, Attachment I, Section 37.

Liquidated Damages:

If the Contractor fails to timely start the assumption of CA-MMIS Operations as required in Exhibit A, Attachment I, Section 37, the Contracting Officer may impose liquidated damages of fifteen thousand dollars (\$15,000) per calendar day for each calendar day the Contractor delays the start of assumption of CA-MMIS Operations.

C. Cycle Time Requirements

The Contractor shall comply with all Cycle Time Requirements as required in Exhibit A, Attachment II, Sections E, subsections 9 through 13, and F, subsection 11.

Liquidated Damages:

If the Contractor does not comply with the above Cycle Time Requirements, the Contracting Officer may impose liquidated damages of thirty-thousand dollars (\$30,000) per calendar month for each calendar month the contractor is not compliant with the Cycle Time Requirements.

D. Production and Mailing of BICs

The Contractor shall timely produce and mail all Beneficiary Identification Cards (BICs) as required in Exhibit A, Attachment II, Section B.4.k.

Liquidated Damages

The Contracting Officer may impose liquidated damages in the amount of one-hundred dollars (\$100) per calendar day for each BIC that is not timely produced and mailed to the correct beneficiary.

E. Timely Payment File Requirement

The Contractor is responsible for delivery of the payment files to the SCO as required by Exhibit A, Attachment II, Section E.8. The Contractor is required to correct within twenty-four (24) hours, or such longer period as authorized by the Contracting Officer, any errors in a payment file that results in the SCO's inability to use the file to pay claims.

The Contracting Officer may impose liquidated damages of twenty-five thousand dollars (\$25,000) per calendar day for each calendar day a payment file is undelivered to the SCO or for each calendar day a payment file remains either uncorrected or the corrected file is not delivered to the SCO.

F. Conditions for Termination of Liquidated Damages

Except as waived by the Contracting Officer, no liquidated damages imposed on the Contractor will be terminated or suspended until the Contractor issues a written notice of correction to the Contracting Officer certifying the correction of condition(s) for which liquidated damages were imposed, and until all Contractor corrections have been subjected to adequate system testing or other verification at the approval of the

Contracting Officer. Liquidated damages will cease on the day of the Contractor's certification only if subsequent verification of the correction by DHCS establishes that the correction has been made in the manner and at the time certified by the Contractor.

The Contracting Officer will determine whether the necessary level of documentation has been submitted to verify corrections. The Contracting Officer will be the sole judge of the sufficiency and accuracy of any documentation. Corrections must be sustained for a reasonable period of at least ninety (90) calendar days from DHCS acceptance; otherwise, liquidated damages may be re-imposed. The Contractor's use of resources to correct deficiencies will not be allowed to cause other Contract compliance problems.

G. Severability of Individual Liquidated Damages Clauses

If any portion of these liquidated damages provisions is determined to be unenforceable, the other portions shall remain in full force and effect.

39. Location of Contractor's Facilities

A. At no time shall any activities relating to this Contract be performed outside the continental United States. The Contractor is required to perform all work specified in the Contract and to acquire facilities in accordance with Exhibit A, Attachment I, Takeover Requirements, within a thirty-five (35) mile radius of the State Capitol building in Sacramento. This thirty-five (35) mile radius shall be calculated by direct line miles and not by actual miles to be driven in a car. Exempt from the thirty-five (35) mile radius requirement are: the Contractor's computer data center and data center help desk which can be located anywhere in the United States (excluding Alaska and Hawaii); the Contractor's software coding activities as defined in the System Development Life Cycle (SDLC) Process in Exhibit A, Attachment III.4.f for Replacement DDI, Enhancements, and Optional Contractual Services (OCS) which can be located anywhere in the continental United States; the call center, which may be located anywhere within the State of California; the Contractor's Field Office Automation Group (FOAG) staff that are currently located in State facilities; and other regional provider relations staff. The Contractor shall be required to have this facility fully installed within the timeframe specified in Exhibit A, Attachment I, Takeover Requirements. However, beginning with the Contract Effective Date, all required CA-MMIS Takeover activities shall take place within the thirty-five (35) mile radius, except for the following exclusions:

- 1) Activities of System analysts and programmers actually related to the installation of the CA-MMIS during Takeover and to the design and development testing of all RFP required expansion items. All of the Contractor's Department/State liaison activities shall take place in the State of California. Further, Contractor employees with first-hand knowledge of the system design, development, installation or modification; system documentation; program specifications; manual processes; deliverable development; and/or system testing shall be made available to DHCS for liaison activities in Sacramento. Once Contractor systems testing or State acceptance testing begins, all further work on systems transfer of the CA-MMIS or the development of the expansion items shall be performed at the proposed Takeover facility.

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- 2) Further exemptions as may be granted with prior, written approval by the Contracting Officer.
- B. DHCS owns or leases all printing equipment housed at the Print Center. The Contractor shall use the State-owned or leased Print Center equipment to meet contractual requirements stated in this Contract. The Contractor shall assume the current lease of the existing building hosting all equipment and services. The Contractor must meet all Print Center requirements as stated in Exhibit A, Attachment II, and ongoing costs are to be paid through cost reimbursement. In addition, all mainframe-originated printing must be performed within the thirty-five (35) mile radius of the State Capitol building in Sacramento.
- C. DHCS shall have the irrevocable right to lease the Contractor's facilities utilized in performance by the Contractor under the Contract beginning at the end of Contract Operations, or in the event of termination under Additional Provision 59, Termination, for a term of not less than one (1) year. DHCS and the Contractor agree to negotiate in good faith to develop and agree to lease terms and conditions. The rental for the facilities shall not exceed the fair market rent for comparable facilities in the same geographic area as determined by the California Department of General Services.
- D. No other uses are to be allowed within the Program Operations facilities and/or space without DHCS prior written approval. The operations space can be on separate floors as long as the floors are connected by a stairwell and elevator (e.g., first and third floors). Likewise, the Program operations facilities and/or space can be located in separate facilities as long as those facilities are within the 35 mile requirement. In the event any Contractor facility and/or space within the facility used for this Contract is no longer needed and/or DHCS has granted prior written approval by the Contracting Officer to utilize this space for work outside the scope of this contract, the Contractor shall provide equitable adjustment to DHCS.
- E. Contractor shall assure the State that Contractor complies with the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq). The website for the State of California access requirements for individuals with disabilities is based on Title 24 of the California Code of Regulations. The address for this site is http://www.documents.dgs.ca.gov/dsa/pubs/checklists_rev_07-29-08.pdf.
- F. The Contractor's facilities shall comply with existing State and local building codes. Facilities shall comply with equipment vendor requirements for temperature, humidity, and cleanliness. Any identified sources of potential equipment malfunction shall be eliminated.
- G. The Contractor shall maintain a current certificate of occupancy for each facility housing state employees and/or equipment necessary to fulfill Contract requirements. This certificate of occupancy shall be issued at least annually by the local fire department or a contractor licensed to issue such a certificate. The Contractor shall provide DHCS a copy of the certificate upon request.
- H. All Contractor facilities utilized under the Contract shall adhere to the requirements found in Exhibit A, Attachment II, Section KK Security and Confidentiality.

40. Media Releases

Contractor shall make a detailed and thorough review of any information, promotional materials, media release, or advertising proposed to be released by it, or any subcontractor, prior to release. The Contractor's review shall include, but not be limited to ensuring the accuracy of terminology, numerical totals, and statistical conclusions. The Contractor or any subcontractor shall make no release without the prior written approval of the Contracting Officer. This Provision shall apply to any release which relates to the Contract, Contractor's performance under the Contract, to any aspect of medical services or payment by the Department, or to any DHCS program.

41. Minimum Financial Criteria**A. Definitions:**

The following definitions shall be used for this Provision:

- 1) Unencumbered consolidated cash shall be defined as uncommitted cash.
- 2) Unencumbered consolidated net working capital shall be defined as current assets less current liabilities.
- 3) Consolidated tangible net worth (or its equivalent for a non-profit organization) shall be defined as book (carrying) value of all assets less the sum of:
 - a. intangible assets, and
 - b. liabilities.

B. Minimum Financial Criteria

To demonstrate and assure to DHCS the Contractor's or its parent corporation's capacity to fulfill its obligations under this Contract, and to serve as security against

the risk of loss or insolvency, the Contractor shall meet the following minimum requirements:

- 1) The Contractor's average monthly unencumbered consolidated cash balance shall be equal to the largest cost (cost to State, Contract price whether billed or unbilled) incurred by the Contractor during any consecutive four (4) week period of the Contract and not reimbursed at that time by the State; or
The Contractor's average monthly unencumbered consolidated net working capital shall be equal to two hundred percent (200%) of the largest cost (cost to State, Contract price whether billed or unbilled) incurred by the Contractor during any consecutive four (4) week period of the Contract and not reimbursed at that time by the State.
- 2) The Contractor's consolidated tangible net worth shall be equal to the largest total cost (cost to the State, whether billed or unbilled) incurred by the Contractor for any three (3) month period.

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- 3) The Contractor shall maintain a minimum working capital ratio of 1 to .5. For purposes of this paragraph, "working capital" means current assets less current liabilities.
- C. In order to safeguard the interest of the State and in order to insure that a Proposer has the financial wherewithal to conduct this Contract, the Proposer shall supply the following information, as appropriate:
- 1) Proposers shall submit a Financial Stability Plan incorporating the following data discussed in items A through F, below, for the past two corporate fiscal years of the Proposer and the interim period from the end of the last full fiscal year up to and including the date specified for submission of Narrative Technical Proposals.

If the Proposer is a subsidiary of any other legal entity and the financial resources of the Parent Corporation are required to qualify the subsidiary for competition under this procurement, the financial stability submission requirements for this section shall apply to the Parent Corporation.

Audited statements are preferred, but not required. DHCS will accept financial statements prepared by the Proposers' financial accounting department, accounting firm or an auditing firm. A statement signed by the Proposer's Chief Financial Officer certifying that the financial statements are accurate and complete must accompany all financial statements. Un-audited financial statements may not be used to qualify under Section f.3), below.

- a. Proposer's annual financial statements for the last two (2) fiscal years, accompanied by an independent certified public accountant's report, certificate or Opinion Statement.
- b. Public interim financial statements for the interim period from the end of the last full fiscal year up to and including the month prior to submission of narrative proposals. The State does not require submittal of interim statements for the last two (2) fiscal years for which annual reports are submitted.
- c. A projected pro forma financial statement and statement of changes in financial position for the next three years predicted upon operation without the award of this Contract.
- d. A detailed financial plan and proposed cash flow budget demonstrating that the availability and source of sufficient funds to cover the Proposer's projected operation cost without risk of insolvency were the Proposer to provide the contractual services under the Contract period.
- e. All financial data submitted in the Financial Stability and Guaranty Provisions Plan in connection with this RFP shall be accompanied by a signed statement from the Proposer's or parent corporation's Chief Executive Officer and Chief Financial Officer or Representative, certifying that the data is current, accurate and complete.

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- f. Proposers must include an organization history of claims of bankruptcy, receivership, questioned cost, repayment of funds, failure to fulfill Contract and criminal or civil legal actions that name the organization or administrative/supervisory staff that have occurred during the past five years. If the Proposer supplies audited financial statements, all noted audit exceptions must be explained.

2) Certification

All financial data submitted in the Financial Stability Plan in connection with this RFP shall be accompanied by a signed statement from the Proposer or parent corporation(s) Chief Executive Officer and Chief Financial Officer or designee certifying that the data is current, accurate, and complete.

3) In lieu of the above Section f.1) A.-F., Proposers may provide the following:

- a. Proposers two most recent annual certified financial statements, accompanied by an independent certified public accountant's Unqualified Audit Report or Opinion Statement (Unqualified/Clean Opinion); and
- b. An organization history of claims of bankruptcy, receivership, questioned cost, repayment of funds, failure to fulfill contract and criminal or civil legal actions that name the organization or administrative/supervisory staff that have occurred during the past five years. Any noted audit exceptions of the audited financial statements must be explained.
- c. Either:
 - i. Evidence of capital contributions and retained earnings equal to an amount greater than one-hundred million dollars (\$100,000,000), as identified in the annual financial statements, or;
 - ii. Evidence of assets under control greater than two-hundred fifty million dollars (\$250,000,000), as identified in the annual financial statements.

4) Guaranty Provisions

If the Proposer is a subsidiary of another entity, the Proposer must submit a guaranty from any entity in the Proposer's chain of ownership that is publicly traded. If no such parent entity is publicly traded, the guaranty shall be submitted by a parent entity at a level in the chain of ownership that is acceptable to DHCS. The guaranty shall meet all the requirements specified in Exhibit E, Additional Provision 31, Guaranty Provisions, be in a form satisfactory to DHCS, and provide for the full and prompt performance of all covenants, terms and conditions, and agreements throughout the life of the Contract.

42. Non-Restrictive Employment Practices

Subject to Exhibit E, Additional Provision 13, Conflict of Interest, Incompatible Activity of Contractor and Employees, the Contractor shall not prevent any Contractor employee, other than those designated as senior management, from being employed by DHCS or

any successor Contractor. The Contractor shall fully cooperate with DHCS and the successor contractor in placing employees assigned to the Contract with the successor Contractor.

The Contractor shall include the requirements of this subsection in all subcontracts.

43. Notice of Delay

Whenever the Contractor has knowledge that any actual or potential situation (including, although not limited to, labor disputes) is delaying or threatens to delay timely, accurate, or required performance of the work under the Contract, the Contractor shall immediately, but not later than one (1) State work day after learning of the situation, give initial notice in accordance with Provision 16, Contract Communication; provide all relevant information to the Contracting Officer within five (5) work days; and provide a Corrective Action Plan within ten (10) workdays of the initial notice.. The Contractor shall require such notice from all subcontractors and the requirement shall be placed into the language of the subcontract itself.

44. Notification of Claims

The purpose of this Provision is to obtain prompt reporting of State conduct that the Contractor believes will result in, or require a change to the Contract.

A. Contractor's Notice

Except for change orders issued by the Contracting Officer in accordance with Additional Provision 12, Change Orders, the Contractor shall promptly notify the Contracting Officer in writing, pursuant to Additional Provision 16, Contract Communication, of State conduct (including actions, inactions, and written or oral communications) that it regards as directing or requiring a change in the Contract terms and conditions. Notification will be promptly given, but shall not exceed fifteen (15) calendar days from the date the Contractor is informed or otherwise becomes aware, of such conduct.

B. Notice Information

The Contractor's notice shall be in a form prescribed by the Contracting Officer and shall state, on the basis of the most accurate information then available to the Contractor, the following:

- 1) The claim is made pursuant to this Additional Provision;
- 2) The date, nature, and circumstances of the conduct regarded as a change;
- 3) The names, function, and activity of each individual, Contractor, subcontractor, State official, or employee involved in or knowledgeable about such conduct;
- 4) The identification of any documents, and the substance of any oral communications involved in such conduct. Copies of all identified documents shall be attached;

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- 5) The reason the Contractor believes the conduct justifies an adjustment to price or performance schedule elements of the Contract; and
 - 6) The particular elements of Contract performance for which the Contractor may seek an equitable adjustment under this clause, including:
 - a. The Contract line item(s) that have been or may be affected by the alleged change;
 - b. The labor or materials or both that have been or may be added/deleted by the alleged change;
 - c. To the extent practicable, the delay and disruption, in the manner and sequence of performance and effect on continued performance, that have been or may be caused by the alleged change;
 - d. The adjustments to contract price, delivery schedule, and other provision affected by the alleged change are estimated; and
 - e. The Contractor's estimate as to the date by which DHCS must respond to the Contractor's notice in order to minimize cost, delay, or disruption of performance.

Following submission of the required notice, the Contractor shall continue performance of the Contract (including matters identified in the notice).

C. Contracting Officer Decision

The Contracting Officer shall promptly, and in any case within thirty (30) calendar days after the receipt of notice from the Contractor provided for in this Provision, respond in writing. The Contracting Officer's response shall:

- 1) Confirm that the conduct of which the Contractor gave notice constitutes a basis for adjustment to the price or performance schedule of the Contract, and where necessary, direct the manner of further performance;
- 2) Countermand any action or communication earlier given relating to the conduct of which the Contractor gave notice;
- 3) Deny that the conduct of which the Contractor gave notice constitutes a basis for adjustment to the price or performance schedule of the Contract, and where necessary direct the manner of further performance; or
- 4) If the information in the Contractor's notice is inadequate to permit a decision to be made under (1), (2), or (3) above, advise the Contractor as to what additional information is required, and establish how that information should be furnished. The Contractor shall have thirty (30) calendar days to respond to the Contracting Officer's request for further information. Upon receipt of this additional information, the Contracting Officer shall have thirty (30) calendar days to respond with a decision.

D. Notice Confirmation

- 1) If the Contracting Officer confirms that the conduct provides a basis for an adjustment in the Contract price or performance schedule of the Contract, or both, the Contracting Officer shall issue a change order, or negotiate a Contract amendment, and the parties shall proceed in accordance with Additional Provision 12, Change Orders, or Additional Provision 5, Amendment Process, as applicable. Any payment adjustment shall be computed as of the date of the Notification of Claim, or upon date of delivery of additional information pursuant to Section (c) above.
- 2) If the Contracting Officer denies that the conduct constitutes a basis for an adjustment in price or performance schedule, the Contracting Officer shall issue a final decision to this effect and the Contractor may proceed in accordance with the Additional Provision 27, Disputes and Appeals. (The above "final decision" is final and conclusive, unless a Notice of Appeal is timely filed.)

E. Contractor Waiver

If the Contractor fails to submit a notice in the manner, and within the time frame specified above, such failure shall constitute a waiver by the Contractor of all claims arising out of said conduct, whether direct or consequential in nature.

F. Unsupported Claims

If the Contractor is unable to support any part of its claim and it is determined that such inability is attributable to misrepresentation of fact or fraud, including failure to provide sufficient information known to the Contractor, the Contractor shall be liable to DHCS for all costs attributable to the reviewing of the claim.

45. On-Site Audit and Monitoring Staff

The Contractor shall provide, throughout the life of the Contract, adequate facilities for DHCS and federal staff at the Contractor's main operating facility, including the following:

- A. Commencing two (2) weeks after the first (1st) day of Takeover, and for the duration of the Takeover period, space for fifteen (15) temporary State staff at the Takeover site. See subsection J. below for details on space needs for these temporary staff.
- B. No later than six (6) months after the first day of Takeover, space for ninety (90) state staff at the Legacy Operations site.
- C. At the beginning of the DD&I phase for the Replacement System, and for the duration of DD&I, space for thirty-five (35) State staff at the DD&I site.
- D. Upon full implementation and throughout the Operations of the Replacement System, the Contractor shall be required to maintain space for one-hundred twenty (120) State staff at the Replacement System Operations site.

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- E. Upon implementation of the TAR Replacement System, the Contractor shall be required to maintain space for two (2) manager-level private offices and four (4) journey-level positions in each TAR Processing Center (TPC).
- F. The above spaces shall include the following:
- 1) Sufficient square footage to accommodate the above staff and necessary equipment. The allocated spaces shall be in contiguous locations adjacent to and on the same floor as the main CA-MMIS processing areas for both the Legacy and the Replacement systems, the Contractor's Takeover staff, and the Contractor's DD&I staff, as outlined in A through D above. Takeover staff and DD&I staff may be housed in the same facility in separate spaces adjacent to the Contractor's Takeover and DD&I staff or in separate facilities with the associated Contractor staff. DHCS will provide the Contractor a breakdown of the number of DHCS staff for each location and in each position category. In addition to space for modular furniture for staff work spaces, the Contractor shall provide:
 - a) Up to eighteen (18) enclosed offices for state Legacy and Replacement Operations staff
 - b) Four (4) enclosed offices for state Takeover staff
 - c) Four (4) enclosed offices for state DD&I staff
 - d) Two (2) enclosed offices for State staff at each TAR Processing Center (TPC).

All office space shall be in accordance with the specifications set forth in the State Administrative Manual, Chapter 1321.14, State Space Allowance Standards. These regulations are available online at <http://sam.dgs.ca.gov/TOC/1300/1321/1321.14.htm>

- 2) In addition to room for staff work spaces specified above, the allotted square footage shall include:

At the State Operations site

- a) Three (3) large conference rooms, one (1) of which is large enough to accommodate at least thirty (30) staff for meetings;
- b) Six (6) sixty (60) square-foot "quiet rooms";
- c) One (1) DHCS-staff only break area in each separate facility, at least two-hundred (200) square feet, equipped with counter tops, sinks, garbage disposals, and electrical outlets for refrigerators and other appliances;
- d) One(1) two-hundred (200) square foot room to house a personal computer, equipment, and work space for DHCS LAN staff;
- e) One (1) four-hundred (400) square foot room for storage and supplies; and
- f) One (1) eight-hundred (800) square foot server room built to meet specifications to be provided at Contract Effective Date.

At the Takeover Site

- a) Two (2) sixty (60) square foot quiet rooms and
- b) If located in a separate facility, a two hundred(200) square foot common break areas equipped with counter tops, garbage disposals, sinks, and electrical outlets for refrigerators and other appliances

At the DD& I Site

- a) Two(2) sixty square foot quiet rooms
- b) One (1) conference room, large enough to accommodate at least twenty (20) staff for meetings
- c) If located in a separate facility the space must also include:
 - i) One (1) one-hundred (100) square foot room for storage and supplies;
 - ii) One (1) two hundred and fifty (250) square foot server room built to meet specifications to be provided at Contract Effective Date; and
 - iii) One (1) two hundred (200) square foot DHCS/staff only break area equipped with counter tops, sinks, garbage disposals, and electrical outlets for refrigerators and other appliances.

At each TPC Site

- a) One (1) two-hundred (200) square foot room to house a personal computer, equipment, and work space for DHCS LAN staff; and,
- b) A shared conference room large enough to accommodate at least twelve (12) staff, available to State staff; and,
- c) No general State work area shall be required for the four (4) journey-level positions.

All these rooms shall be equipped with locks.

- 3) A keycard system is required for entrance to all Department staff-designated areas in Contractor Operations and DD&I facilities. All entrance doors to the Department-designated areas shall have a keycard system that does not require the use of the keycard during normal business hours (as determined by the Department), but will restrict and/or record access of staff entering after hours. Access information shall be maintained for a minimum of thirty (30) calendar days, and shall be provided to DHCS upon request, within one business day.
 - 4) All private offices shall have a method for providing natural lighting from the outside.
 - 5) Space for up to five (5) additional DHCS and/or federal audit staff on a temporary, as-needed basis, not to exceed seventy (70) State work days in a twelve (12) month period. Equipment necessary to these audit activities, such as desks, chairs, telephones, use of duplicating equipment, etc., shall be provided, as well.
- G. Access to available Contractor parking space to provide free parking space for all DHCS and federal monitoring and auditing staff as well as six (6) designated DHCS visitor spaces at the Contractor Operations facility(s) where State designated staff reside, one (1) designated DHCS-only parking space, and one (1) space designated for State car only. The State-car-only parking space must be unmistakably identified as such and located near the facilities entrance. If the Contractor has designated parking for its managers, then designated parking must be available for DHCS on-site managers, adjacent to the space provided for Contractor management staff. Additionally, reasonable accommodation shall be

made for parking for disabled DHCS and federal staff. DHCS employees shall have the same access to parking facilities as the Contractor employees.

- H. Access to and provision of required support services for the State Operations, DD&I and TPC sites such as:
- 1) Electrical outlets, two (2) for each State staff desk location and sufficient others as are required by the State, including dedicated lines for Department equipment; data lines, both power and communication, one (1) for each State desk location; printer cables at the Department's option; connect printers to the Contractor's computer data center; personal computer hookups for each staff person; and access to Contractor duplication equipment (the use of duplication equipment to be cost reimbursable).
 - 2) Janitorial and maintenance services and restroom availability adjacent to State designated staff areas for on-site accommodations and for the staff.
 - 3) Except at the TPCs, at least two (2) restrooms (one (1) designated for Men, and one (1) for Women) to include adequate showers, a locker room and changing facilities to accommodate at least ten (10) staff each.
- I. In addition to the above items, which are part of the fixed price, the Department may require the Contractor to provide modifications to this facility through the cost reimbursement provisions, such as the addition and/or installation of walls, partitions, modular furniture, any telecommunication links to the State data centers, and other equipment, services and monitoring tools for the Department to use for monitoring the Contract.
- J. The Contractor shall meet the requirements of the RFP for fifteen (15) temporary on-site State staff during the Takeover period of the Contract, commencing two (2) weeks after the first day of Takeover.
- 1) The Takeover on-site staff shall be housed immediately adjacent to Contractor staff working on Takeover activities. These staff shall be provided with desks, chairs, storage cabinets (e.g., bookcases); access to duplication equipment and lunch/break/restroom facilities; tables; two (2) locking file cabinets; at least two (2) private offices; one (1) conference room; multiple electrical outlets; telephone hookups to the Contractor's telephone system (at least one (1) for each two (2) DHCS staff work stations and one (1) for the private office); CRT cabling (one (1) for each DHCS staff workstation) and four (4) dedicated electrical lines; partitions sufficient to create staff workstations for each two (2) DHCS staff. At least eighty (80) square feet of space shall be allotted for each DHCS staff person.
 - 2) Janitorial and maintenance service shall be provided in the DHCS work area during this time period.
 - 3) This temporary space shall be available within two (2) weeks after the first day of Takeover and shall remain available for the full fourteen (14) months of Takeover, either in the Contractor's temporary facilities, if and when the Contractor uses a temporary facility, or in the Contractor's permanent facilities.

When permanent facilities are available, the Takeover staff shall be moved by the Contractor to these facilities. This move will be paid by cost reimbursement.

Further, any long distance calls made by State staff on the Contractor's telephone system shall be cost reimbursed.

- 4) Free parking for all twenty-five (25) temporary State staff shall also be made available during the entire time of their occupancy, with at least four (4) spaces designated for management.
- K. Contractor shall assure the State that Contractor complies with the Americans with Disabilities Act of 1990 (United States Code Title 42, Chapter 126, Section 12101 et seq).

46. Opportunities for Reduction in Operation Costs

The Contractor is encouraged to submit proposals that reduce the operations cost of the CA-MMIS FI Contract. These proposals shall be known as Cost Reduction Change Proposals. If approved, a Contractor-initiated proposal will result in a shared savings between the Contractor and the DHCS.

A. General

- 1) The Contractor is encouraged to develop, prepare, and submit Cost Reduction Change Proposals voluntarily. As provided in this Provision, the Contractor shall share in net Contract savings realized from accepted Cost Reduction Change Proposals.
- 2) Cost Reduction Change Proposals related to services under the fixed price portion of the Contract must be approved by the Contracting Officer prior to implementation under the change order process set forth in Additional Provision 12, Change Orders. The Contractor shall not implement any cost reduction action that would constitute a change in Contractor responsibilities under Additional Provision 12, Change Orders, without first having complied with the provisions of this Provision. (See also Additional Provision 44, Notification of Claims).
- 3) Notwithstanding the provisions of Exhibit B-1, Special Payment Provisions, of this RFP, relating to payment of cost reimbursement services under the Contract, DHCS will share the savings resulting from the implementation of Cost Reduction Change Proposals relating to cost reimbursement services with the Contractor. The purpose of this Provision is to provide an incentive for the Contractor to make changes that will reduce costs, even in activities where its costs are reimbursed.

B. Definitions

- 1) **Cost Reduction Change Proposal**, as used in this Provision, means a proposal that:

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- a. In connection with services under the fixed price portion of the Contract, requires a change order under the Contract to implement; or
 - b. In connection with services subject to cost reimbursement, has been approved by the Contracting Officer; and in either case
 - c. Results in reducing the overall projected cost to DHCS without impairing the Contractor's performance of its duties and responsibilities under the Contract.
- 2) **Net Contract Savings**, as used in this Provision, means cContract savings, less DHCS costs.
 - 3) **Contract Savings**, as used in this Provision, are the net cost reductions to the Contract, and are equal to cost reductions effected by the Cost Reduction Change Proposal (calculated in accordance with this Provision) less the Contractor's allowable development and implementation costs.
 - 4) **State Costs**, as used in this Provision, means those State costs that result directly from developing and implementing the Cost Reduction Change Proposal, such as any net increases in the cost of testing, operations, maintenance, and logistics support. The term does not include the usual and customary administrative costs of processing the Cost Reduction Change Proposal.
 - 5) **Contractor's Development and Implementation Costs (CD&I)**, as used in this Provision, means those costs the Contractor incurs on a Cost Reduction Change Proposal specifically in developing, testing, preparing, and submitting the Cost Reduction Change Proposal, as well as those costs the Contractor incurs to make the contractual changes required by DHCS' acceptance of a Cost Reduction Change Proposal.
 - 6) **Sharing Period**, as used in this Provision, means the period beginning with acceptance of the Cost Reduction Change Proposal and ending when the life of the Contract ends pursuant to Additional Provision 58, Term of the Contract.
- C. Cost Reduction Change Proposal preparation:

At a minimum, the Contractor shall include in each Cost Reduction Change Proposal the information described in subparagraphs (1) through (8) below:

- 1) Identification of the specific costs that are reduced as a result of the Cost Reduction Change Proposal. This will require that the Contractor document the current cost incurred by DHCS and the savings resulting from implementation of the Cost Reduction Change Proposal.
- 2) A description of the difference between the existing Contract requirement and the proposed requirement, the comparative advantages and disadvantages of each, a justification when a function or characteristic under the Contract is being altered, and the effect of the change on the Contractor's performance;
- 3) A list and analysis of the Contract requirements that must be changed if the Cost Reduction Change Proposal is accepted, including any suggested specification

revisions; Identification of the Contract services to which the Cost Reduction Change Proposal applies;

- 4) A separate, detailed cost estimate for 1) the affected portions of the existing Contract requirement and 2) the Cost Reduction Change Proposal. The cost reduction associated with the Cost Reduction Change Proposal shall take into account the Contractor's allowable CD&I costs, including any amount attributable to subcontracts.
- 5) A description and estimate of costs DHCS may incur in implementing the Cost Reduction Change Proposal, such as test and evaluation and operating and support costs;
- 6) A statement of the time by which a Contract modification accepting the Cost Reduction Change Proposal must be issued in order to achieve the maximum cost reduction, noting any effect on the Contract compliance time requirements (cycle times, systems and Telephone Call Center availability, etc.); and
- 7) Identification of any previous submissions of the Cost Reduction Change Proposal, including the dates submitted, and previous actions by DHCS, if known.

D. Submission

The Contractor shall submit Cost Reduction Change Proposals to the Contracting Officer pursuant to Provision 16, Contract Communication.

E. Action by DHCS

- 1) The Contracting Officer shall notify the Contractor of the status of the Cost Reduction Change Proposal within forty-five (45) calendar days after the Contracting Officer receives it. If additional time is required, the Contracting Officer shall notify the Contractor within the forty-five (45) calendar day period and provide the reason for the delay and the expected date of the decision. DHCS will process Cost Reduction Change Proposals expeditiously; however, it shall not be liable for any delay in acting upon a Cost Reduction Change Proposal. The Contracting Officer may request additional information that is necessary in evaluating the Proposal.
- 2) If the Cost Reduction Change Proposal is not accepted, the Contracting Officer shall notify the Contractor in writing, explaining the reasons for rejection. The Contractor may withdraw any Cost Reduction Change Proposal, in whole or in part, at any time before it is accepted by DHCS. Prior to acceptance, the Contracting Officer may require that the Contractor provide written notification before it undertakes significant expenditures for Cost Reduction Change Proposal development efforts.
- 3) Any Cost Reduction Change Proposal related to services under the fixed price portion of the Contract may be accepted, in whole or in part, by the Contracting Officer's approval of a change order under Additional Provision 12, Change

Orders, citing this Provision. Until such a change order applies a Cost Reduction Change Proposal to the contract, the Contractor shall perform in accordance with the existing Contract.

- 4) Any Cost Reduction Change Proposal related to services subject to cost reimbursement may be accepted, in whole or in part, by the Contractor's written approval in accordance with Additional Provision 14, Conformance with State and Federal Statutes and Regulations.
- 5) The Contracting Officer's decision to accept or reject all or part of any Cost Reduction Change Proposal, and the decision as to which of the sharing rates applies, shall be final and not subject to Additional Provision 27, Disputes and Appeals, or otherwise subject to litigation.

F. Sharing rates

1) Proposals Related to Operations:

If a Cost Reduction Change Proposal is accepted, the Contractor shall share in net Contract savings according to the percentages set forth below.

- a. If a Cost Reduction Change Proposal is Contractor initiated, net Contract savings shall be apportioned seventy-five percent (75%) to the Contractor and twenty-five percent (25%) to DHCS. The twenty-five percent (25%) savings shall be applied under Additional Provision 12, Change Orders, or, if there are no offsetting changes, the apportioned savings will result in a reduction in Contract prices.
- b. If a Cost Reduction Change Proposal results from joint efforts on the part of DHCS and the Contractor, net Contract savings shall be proportionately shared between the parties, the proportioned shares to be determined through an agreement of the parties. In the event that an agreement on proportioned shares cannot be reached within six (6) months of the date the

DHCS authorizes the change, the DHCS and the Contractor shall each share fifty percent (50%) of the benefits.

2) Proposals Related to Cost Reimbursed Items:

For Cost Reduction Change Proposals that affect the cost reimbursement portion of the Contract, net Contract savings shall be apportioned between DHCS and the Contractor as follows:

Cumulative Savings	DHCS Share	Contractor Share
\$5,000 - \$250,000	50%	50%
\$250,001 and above	Percent apportionment negotiable but shall not exceed 50% to the Contractor and shall not exceed a maximum of \$500,000 per improvement to the contractor.	

3) Proposals Originated and Paid for by DHCS:

For system improvements originated and paid for by DHCS which decrease the operating expenses or costs, or result in one-time decreased expense or cost, and that are not utilized to offset changes under Additional Provision, Section 12, Change Orders, the financial benefits of those changes shall be one hundred percent (100%) to DHCS and will result in a reduction of the cost or price of the Contract.

G. Calculating and documenting Contract savings

- 1) DHCS costs (such as CD&I costs) shall be offset against the savings generated by the Cost Reduction Change Proposal each time such savings are realized until all costs are fully offset. Then, the Contractor's share is calculated by multiplying net Contract savings by the appropriate Contractor's percentage-sharing rate (see Section F, Sharing Rates, above). Additional Contractor shares of net Contract savings shall be paid to the Contractor at the time savings are realized until the Contractor's share is fully realized, subject to Section F.
- 2) Documentation of Contract savings is the responsibility of the Contractor and is subject to Contracting Officer review and approval prior to payment of the Contractor's share of cost savings as allocated using the apportionment methodology described above. The Contractor will submit a monthly cost savings invoice with appropriate documentation to DHCS. The Contracting Officer must approve the documentation submitted before payment of the invoice is made. For one-time cost savings, the Contractor will submit a single invoice with appropriate documentation before payment of the invoice is made.

H. Paying the net contract savings

The Contractor shall pay the DDI costs of a cost reduction change proposal as specified in this paragraph. DHCS may initially pay those Contractor's development and implementation costs that are cost reimbursable under Exhibit B, Attachment 1, for Cost Reduction Change Proposals that have been accepted by the Contracting Officer. Such costs are then amortized over a twelve- (12-) month period and shall offset the Contractor's monthly share of savings for the first twelve (12) months following implementation of the Proposal. Costs for Cost Reduction Change Proposals resulting in one-time cost savings are not amortized. The Contractor's share of the one-time savings is billable at the time it is achieved, less those reimbursable costs that are required to implement the proposal.

I. Confidentiality

Confidential trade secret information submitted by the Contractor in support of a Cost Reduction Change Proposal shall be subject to Exhibit E, Additional Provision 20, Contractor Responsibilities – General.

J. Disputes and notification of proposal development

- 1) Disagreements regarding the calculation or payment of the Contractor's savings share, or other matters (except as provided in paragraph (e) above) shall be subject to Additional Provision 27, Disputes and Appeals, as appropriate.

- 2) Disputes over whether a Cost Reduction Change Proposal was Contractor- or DHCS-initiated shall be settled by a comparison of the date or dates on which the Contracting Officer was first notified in writing of the proposed change. For purposes of this section “notification” must consist, at a minimum, of a description of the proposal, the steps necessary to implement the proposal, and an estimate of the costs and savings that are anticipated. General recommendations as to changes or improvements that could result in cost savings will not constitute notification. Notification from the Contractor shall be in accordance with the requirements of Exhibit E, Additional Provision 16, Contract Communication. Notification from DHCS sources shall be transmitted to the Contracting Officer on Official DHCS letterhead that has been dated and signed. In the event that the Contracting Officer received notification from both DHCS staff and the Contractor on the same date, he or she shall reach a determination as to which party originated the proposal, subject to the dispute resolution provisions contained in Exhibit E, Additional Provision 44, Notification of Claims.

K. Other Provisions

- 1) At the sole option of the Contracting Officer, the Department may assume part of the Contractor's DDI costs.
- 2) In the event the Contractor initiates the development, design, or implements changes or improvements in operations under the Contract that do not fall within the scope of this Additional Provision, the Contractor shall bear all costs.
- 3) Without limitation, this Additional Provision does not apply to Contractor implementation of change orders issued by the Contracting Officer in direct response to changes in federal or State statutes, regulations, or decisional law subsequent to Contract award. Any savings from these actions shall accrue one hundred percent (100%) to DHCS.
- 4) The United States Postal Service and other vendors whom the Contractor utilizes for pass-through expenses may enact rate changes that reduce cost reimbursement expenses. This Provision does not apply to such reductions and the Contractor shall not claim a share of the savings resulting from reduced rates from these utilities. Any savings from these rate reductions shall accrue one hundred percent (100%) to DHCS.

47. Patent or Copyright Trademark and Trade Secret Infringement

The Contractor represents and warrants that no program, process, composition, writing, equipment, appliance or device, trade-mark, service mark, logo, idea, configuration parameters to all systems, all data stored on any media, all operational parameters and codes that run any system (batch instructions, etc.), scripts, or any other work or invention of any nature or any other tangible or intangible property whatsoever developed, provided, or used by the Contractor (other than provided or used by DHCS or another Contractor at DHCS' request) in connection with its performance under this Contract, infringes or will infringe any patent, copyright, trademark or other service mark of any other person or entity, or is or will be a trade secret of any other person or entity.

In the event a claim of infringement is brought against DHCS because of the work performed by the Contractor, this Provision will apply. DHCS will inform the Contractor as soon as practicable of the claim or action alleging such infringement and shall give the Contractor the full opportunity to participate in the response thereto and the defense thereof, including without limitation, any agreement relating to the settlement thereof pertaining only to the rights of the Contractor.

48. Performance Evaluation

- A. This provision replaces and supersedes Exhibit D(F), Provision 23, Performance Evaluation.
- B. The Contractor's performance under this Agreement shall be evaluated at the conclusion of the life of this Contract. The evaluation shall include, but not be limited to:
 - 1) Whether the Contracted work or services were completed as specified in the Contract, and reasons for and amount of any cost overruns.
 - 2) Whether the Contracted work or services met the quality standards specified in the contract.
 - 3) Whether the Contractor fulfilled all requirements of the Contract. Factors outside the control of the Contractor shall not be included in the Performance Evaluation.
- C. At the Contracting Officers discretion, DHCS may share a draft of the evaluation with the Contractor and may consider the Contractor's comments in finalizing the evaluation.
- D. The evaluation of the Contractor shall not be a public record. However, performance evaluations may be considered by DHCS prior to making future Contract awards for any service.

49. Prior State Approval Requirements: Communication between the Contractor and Providers and Beneficiaries

- A. Prior DHCS review and written approval shall be received by the Contractor for all billing-related forms and authorizations, including but not limited to; provider manuals, bulletins, newsletters, and other informational material for providers or beneficiaries; eligibility verification and provider telecommunication messages; form-letter communications with providers or beneficiaries; explanatory material on explanation of benefits (EOB) or remittance advice (RA) forms; claim status documents sent to providers; RTDs or CIFs; and individual correspondence with providers or beneficiaries addressing policy, benefit, payment, or regulation questions, unless DHCS previously approved such language. All changes to previously approved language shall also receive prior DHCS approval.
- B. For each and every occurrence where the Contractor fails to meet any of these requirements, the Contracting Officer may notify the Contractor in writing that the requirement was not met. The Contractor shall have five (5) State work days to

present to DHCS for review and written approval a written retraction or correction of previously released, unapproved material in publishable form, as well as the exact and itemized costs of developing, printing/imaging or the like, producing, and mailing the unapproved material. With DHCS approval, this retraction or correction shall be printed, produced and mailed to all providers receiving the original document(s) solely at the Contractor's expense within six (6) State work days of DHCS approval of the retraction/correction. Further, the costs of developing, printing/imaging or the like, producing, and mailing the original unapproved documents shall be borne solely by the Contractor and shall be deducted from the next administrative payment made to the Contractor by DHCS.

50. Progress Reports or Meetings

- A. Contractor shall submit Progress Reports, or attend meetings with DHCS personnel, at intervals determined by DHCS. Progress Reports are used to determine if the Contractor is fulfilling its requirements under the Contract, whether specified projects are on schedule for completion, provide communication of interim findings, and afford Contractor the opportunity to communicate difficulties or special problems encountered so that remedies can be developed quickly.
- B. At the conclusion of this Contract and if applicable, Contractor shall hold a final meeting at which Contractor shall present any findings, conclusions, and recommendations. If required by this Contract, Contractor shall submit a comprehensive final report.

51. Prohibited Follow-on Contracts

- A. No person, firm, or subsidiary thereof who has been awarded a consulting services agreement may submit a bid for, nor be awarded an agreement for, the provision of services, procurement of goods or supplies, or any other related action that is required, suggested, or otherwise deemed appropriate in the end product of the consulting services agreement.
- B. Paragraph A does not apply to any person, firm, or subsidiary thereof who is awarded a subcontract of a consulting services agreement which totals no more than ten percent (10%) of the total monetary value of the consulting services agreement.
- C. Paragraphs A and B do not apply to consulting services agreements subject to Chapter 10 (commencing with Section 4525) of Division 5 of Title 1 of the Government Code.

52. Project Management Plan

All Project Management Plans shall conform to IEEE Standards # 1058-1998, best Practices for Project Management Office of the State CIO State Integration Division (SID), and/or other standards acceptable to the State.

The following is a list of items and criteria which shall be included in every Project Management Plan submitted to the State. The list of items is not all-inclusive. Items may be waived by the Contracting Officer in writing for Project Plans as they relate to specific phases of the Contract.

The Contractor will prepare plan templates for DHCS. The Contractor will work with DHCS to confirm the schedule and content for the respective plans. All Contractor plans completed and approved will be implemented and used throughout ongoing operations. The Contractor must receive written approval for all plans from DHCS prior to beginning any activities for the applicable task.

Each Plan shall contain, at a minimum, the following components:

- A. **Integration Management** consisting of:
 - 1) A Change Control Management Plan
 - 2) An Issue Management Plan
 - 3) A Decommissioning Plan

- B. **Scope Management** consisting of
 - 1) A Scope Management Plan
 - 2) Work Breakdown Structure (WBS).
Each WBS must include
 - a. Description
 - b. Identifiable product
 - c. Skill/resource categories
 - d. Estimated resource
 - e. Overall duration of the activity

- C. **Time Management** consisting of
 - 1) A Schedule Management Plan
 - 2) A Project Schedule (Gantt Chart) including
 - a. Activity sequences
 - b. Dependencies
 - c. Durations
 - d. Resource assignments
 - e. Schedule constraintsEach Project Schedule must indicate:
 - i. Title and Contract number
 - ii. Start date
 - iii. Implementation date
 - iv. Milestones
 - v. Phase completion dates and corresponding hours
 - vi. Resources required
 - vii. Predecessor and successor activities
 - viii. Internal training
 - ix. CA-MMIS stakeholder education
 - x. Contingency plan

All deliverables and/or tasks requiring DHCS approvals shall be identified with the date approved.

All Project Schedules must sequence and schedule all subtasks logically, and obtainable time frames shall be provided for task completion.

- D. **Cost Management** consisting of

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- 1) A Cost Management Plan
 - 2) A Resource Breakdown Structure
 - 3) A Project Budget
- E. **Quality Management** consisting of a Quality Management Plan conforming to IEEE standards. This plan shall include
- 1) Quality metrics
 - 2) Quality checklists
- F. **Human Resources Management** consisting of
- 1) A Human Resources Management Plan
 - 2) Roles and Responsibilities
 - 3) Project Organization Charts
 - 4) Staffing Management Plan
- G. **Communications Management** consisting of a Communications Management Plan
- H. **Risk Management** consisting of a Risk Management Plan
- I. **Procurement Management** consisting of
- 1) Procurement Management Plan
 - 2) Contract Statement of Work
 - 3) Make-or-buy Decisions

53. **Provider Bankruptcies**

The Contractor shall notify the DHCS of any pending, proposed or actual provider bankruptcies within three (3) State work days after such information becomes known to the Contractor. The Contractor shall inform the Contracting Officer of the provider's name, provider ID number, address and phone number and the extent of any current Accounts Receivable activity relating to that provider.

54. **Provider Requirements**

A. **Provider Records**

The Contractor shall be aware of and inform providers that, in accordance with Title 22, California Code of Regulations, Section 51476, each Medi-Cal provider shall be required to keep and maintain such records as are necessary to fully disclose the type and extent of services provided to a Medi-Cal beneficiary.

The Contractor shall be aware of and inform providers that no provider shall refuse or fail to make available, during regular business hours, all pertinent records concerning the provision of health care services to a Medi-Cal beneficiary to any duly authorized representative of the State or federal government acting in the scope and course of his or her employment.

B. **Assurance For Nondiscrimination**

The Contractor shall be aware of and inform providers that they shall comply with Title VI of the Civil Rights Act of 1964 (Public Law 88-352) and all requirements

imposed by or pursuant to the regulations of the DHHS (Title 45, Code of Federal Regulations, Part 80) issued pursuant to that title to the end that, in accordance with Title VI of that Act and the regulations, no person in the United States shall, on grounds of race, color, religion, sex, age, disability, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the applicant receives financial assistance from DHCS.

C. Provider Payment

The Contractor shall be aware of and inform providers that a provider shall not submit a claim to, demand, or otherwise collect reimbursement from a Medi-Cal beneficiary or from other persons on behalf of the beneficiary for any service included in the Medi-Cal program's scope of benefits for which the provider submitted a claim to the Medi-Cal program for that service except to collect beneficiary's Share of Cost, if the beneficiary's eligibility profile states so, or to collect payments due where the benefits available under the Medi-Cal program duplicate those provided under other contractual or legal entitlements of the person or persons receiving them (Welfare and Institutions Code, 14019.3).

D. Provider Suspected of Fraud

The Contractor shall be responsible for referring providers suspected of Medi-Cal fraud or abuse to the Audits and Investigations Division of DHCS.

55. Subcontract Requirements

- A. This provision replaces and supersedes Exhibit D(F), Provision 5, Subcontract Requirements.
- B. Prior written authorization will be required before the Contractor enters into or is reimbursed for any subcontract for services costing \$5,000 or more. Except as indicated in paragraph B(3) herein, when securing subcontracts for services exceeding \$5,000, the Contractor shall obtain at least three bids or justify a sole source award.
 - 1) The Contractor must provide in its request for authorization, all particulars necessary for evaluating the necessity or desirability of incurring such cost.
 - 2) DHCS may identify the information needed to fulfill this requirement.
 - 3) Subcontracts performed by the following entities or for the service types listed below are exempt from the bidding and sole source justification requirements:
 - a. A local governmental entity or the federal government,
 - b. Any State college or State university,
 - c. A Joint Powers Authority,
 - d. An auxiliary organization of a California State University or a California Community college,

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- e. A foundation organized to support the Board of Governors of the California Community Colleges,
 - f. An auxiliary organization of the California Student Aid Commission established under Education Code § 69522,
 - g. Entities of any type that will provide subvention aid or direct services to the public.
 - h. Firms or individuals proposed for use and approved by DHCS' funding Program via acceptance of an application or proposal for funding or pre/post contract award negotiations, and
 - i. Entities and/or service types identified as exempt from advertising and competitive bidding are listed in the State Contracting Manual Chapter 5 Section 5.80 Subsection B.3. The State Contracting Manual can be viewed at the following Internet address: <http://www.ols.dgs.ca.gov/ContractManual/default.htm>.
- 4) When the conditions of C apply, each subcontract that is not with a type of entity or of a service type described in paragraph B(3) herein, shall not commence work before DHCS has provided applicable prior written approval to use said subcontractor. DHCS shall inform the Contractor when DHCS has obtained appropriate approval to use said subcontractors.
- C. DHCS reserves the right to approve or disapprove the selection of subcontractors and with advance written notice, require the substitution of subcontractors and require the Contractor to terminate subcontracts entered into in support of this contract.
- Upon receipt of a written notice from DHCS requiring the substitution and/or termination of a subcontract, the Contractor shall take steps to ensure the completion of any work in progress and select a replacement, if applicable, within thirty (30) calendar days, unless a longer period is agreed to by DHCS.
- D. Actual subcontracts (i.e., written agreement between the Contractor and a subcontractor) of \$5,000 or more are subject to the prior review and written approval of DHCS. DHCS may, at its discretion, elect to waive this right. All such waivers shall be confirmed in writing by DHCS.
- E. Contractor shall maintain a copy of each subcontract entered into in support of this contract and shall, upon request by DHCS, make said copies available for approval, inspection, or audit, within three (3) State workdays of receipt of the request.
- F. DHCS assumes no responsibility for the payment of subcontractors used in performance of this contract. Contractor accepts sole responsibility for the payment of subcontractor used in performance of this contract.
- G. The Contractor is responsible for all performance requirements under this Contract even though performance may be carried out through a subcontract.

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- H. When entering into a consulting service agreement with DHCS, the Contractor will be required to supply budget detail for each subcontractor and/or each major subcontracted activity under this contract.
- 1) Budget detail format and submission requirements will be determined by DHCS.
 - 2) Methods of including budget detail in this contract, if applicable, will be determined by DHCS.
 - 3) Any subcontractor budget detail displayed in this contract, or incorporated by reference, is included for information purposes only. Changes to a subcontractor's identity or budget detail shall not require the processing of a formal amendment to this contract.
- I. The Contractor shall ensure that all subcontracts for services include provision(s) requiring compliance with applicable terms and conditions specified in this contract.
- J. The Contractor agrees to include the following clause, relevant to record retention, in all subcontracts for services:
- “(Subcontractor Name) agrees to maintain and preserve, until four (4) years after termination of (Agreement Number) and final payment from DHCS, to equal a total of seven (7) years, to permit DHCS or any duly authorized representative, to have access to, examine or audit any pertinent books, documents, papers and records related to this subcontract and to allow interviews of any employees who might reasonably have information related to such records.”
- K. Unless otherwise stipulated in writing by DHCS, the Contractor shall be the subcontractor's sole point of contact for all matters related to performance and payment under this Contract.
- L. Contractor shall, as applicable, advise all subcontractors of their obligations pursuant to the applicable numbered provisions of this exhibit.

56. Subcontracts and Cost Reimbursable Purchases

In addition to Provision 55 of this Exhibit, the Contractor shall abide by the following requirements:

- A. As used in the contract, the term "subcontractor" shall include any individual or entity, whether or not affiliated with the Contractor that enters into a subcontract with the Contractor, or any other subcontractor.
- B. A subcontract as used in the contract means any contract which is a mutually binding legal relationship, obligating the seller to furnish supplies, funds or services (including construction) to the Contractor in exchange for consideration. The subcontract includes any type of commitment that may obligate DHCS or the State to pay an expenditure of appropriated funds and that, except as otherwise authorized, is in writing. In addition to bilateral agreements, subcontracts for purposes of this Provision include, but are not limited to: awards and notices of award; job orders; ordering agreements; orders, such as purchase orders, under which the contract

becomes effective by written acceptance or performance, including changes and/or modifications to purchase orders; and bilateral contract modifications, entered into by a subcontractor to furnish supplies or services for performance of a prime contract or a subcontract.

- 1) Unless precluded by other provisions of the contract, the Contractor may enter into subcontract(s) for performance of various functions under the contract. All subcontracts pursuant to the contract shall be in writing.
- 2) All subcontracts shall be approved in writing by DHCS in advance of performance by the subcontractor, unless the need for such approval is specifically waived by the Contracting Officer in advance and in writing. In the event of a waiver, DHCS shall continue to have access, within two (2) State work days of its request, to all subcontract-related documentation, including the subcontract itself, upon Contracting Officer's request. Existing subcontracts that the Contractor proposes to use for performance of any of its functions under the contract shall be subject to the prior approval provisions of this paragraph.
- 3) No subcontract that the Contractor enters into shall in any way relieve the Contractor of any responsibility for performance of its contract duties.
- 4) The Contractor shall be held responsible for a subcontractor's actions, or for its failure to take required actions, in regards to fulfilling the requirements of the contract. Should DHCS or the State suffer damages due to the actions, or to the inactions, of a subcontractor, DHCS shall be entitled to seek remedy from the Contractor for these damages either through the liquidated damages provisions of the Contract or through any other recourse available to it under the Contract or under the law or equity. Furthermore, DHCS may require that the Contractor to review selected subcontractors and/or require that the Contractor add conditions to the subcontractor's contract.
- 5) For any subcontractor accepted as a part of the Contractor's Narrative Technical Proposal, the subcontract shall specify that the subcontractor may not terminate or change its relationship to the Contractor without the prior and express written approval of the Contractor. Such approval by the Contractor shall not be granted unless the Contractor receives prior written approval from the Contracting Officer regarding the termination or change in relationship. The Contractor shall not terminate a subcontract or alter the working relationship between the Contractor and a subcontractor accepted as a part of the Contractor's Narrative Technical Proposal, without the prior written approval of the Contracting Officer.
- 6) The Contractor shall develop and maintain backup plans that shall be put into effect at the Contracting Officer's direction in the event of a default on the part of a subcontractor designated to perform work as a part of the Contractor's Narrative Technical Proposal. The Contracting Officer may require that such plans be periodically updated so as to ensure a smooth transition to designated backup resources with no disruption of contractually required activities.

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- 7) The Contractor shall give the Contracting Officer notice in writing, within one (1) State work day, of any action or suit filed and prompt notice of any claim made against the Contractor by any subcontractor or vendor that may result in litigation related in any way to the contract or to the Contractor's performance under it.
 - 8) Before the Contracting Officer will consider whether to approve any subcontract for telephone services, the Contractor shall be required to fully inform the Contracting Officer of any products offered by the subcontractor that involve members of the public being charged for dialing a number where a recorded message or a "live" presentation is made over the phone.
 - 9) The Contractor shall secure at least three written, competitive quotations for all subcontracts and purchases of \$5,000 or more that are subject to the cost reimbursement and/or change order provisions of the contract. In the case of purchases or subcontracts in excess of \$1,000 but less than \$5,000, the Contractor may seek Contracting Officer approval to purchase or subcontract without obtaining three competitive quotations. The Contractor must obtain the Contracting Officer's approval in writing prior to finalizing the subcontract or the purchase; otherwise, three quotations shall be obtained as provided above. Purchases or subcontracts for less than \$1,000 are exempt from the provisions of this paragraph. For audit purposes, all information associated with the competitive quotation/procurement for a subcontract or purchase must be maintained for the life of the contract by the Contractor. This includes but is not limited to the method of solicitation, evaluation criteria, and any scoring process used. Additionally, the Department may, at its sole option, process the subcontracts or purchases described in this paragraph through the State's procurement procedures.
 - 10) If competitive quotations are received and the Contractor decides to enter into the subcontract or the purchase with an entity other than the one that submitted the quotation for the least amount of money, the Contracting Officer must approve, in writing, such decision prior to finalization of the subcontract or the purchase.
 - 11) In all instances where the Contractor has received written competitive quotations, these shall be made available to the Contracting Officer upon his/her request. Purchase orders for public utility services and postage at rates established for the general public are not included in this requirement. Subcontracts subject to the cost reimbursement provisions of the Contract shall not provide for payment on a cost-plus-a-percentage-of-cost basis.

Subcontracts or purchases subject to cost reimbursement by DHCS shall be payable at reasonable cost. A cost is reasonable if, by its nature and amount, it does not exceed that which would be incurred by a prudent person in the conduct of a competitive business.
 - 12) No changes shall be made to subcontracts wherein services are provided directly or indirectly to the State, without prior approval from the Contracting Officer.

- 13) The Contractor shall provide to DHCS, within three (3) State work days of request, a complete copy of any subcontract, including addenda, amendments, and attachments.

57. Technical Standards and/or Guidelines

The Contractor is required to meet or exceed the technical standards and/or guidelines for the various components, where appropriate. This applies to all updates, revisions or superseding standards and/or guidelines subsequently available. The technical standards and/or guidelines are current as of July 2008.

Table 1: State of California Technical Standards and/or Guidelines

Technical standards and/or guidelines current as of July 1, 2008.

Requirement	References
GUI/Access/Web Services	<ol style="list-style-type: none"> 1. California Enterprise Architecture Program (CEAP) – CA-MMIS /FI Procurement Data Library/Supporting CA-MMIS Information/References-Standards/California_SOA_and_IDM_Technical_Vision_1-7-2008.pdf 2. Office of the State Chief Information Officer (OCIO) policies and compliance components, as found in the CA-MMIS/FI Procurement Data Library/Supporting CA-MMIS Information/References – Standards/(all documents/(all documents prefixed with OCIO EA) 3. Federal ADA Guidelines 4. Web service standards (Oasis and W3C) 5. NIST 800-95 Guide to Secure Web Services
Design/DDI/Documentation / SDLC	<ol style="list-style-type: none"> 1. CMMI level 2 or ISO/IEC 12207: 2008 2. State CIO SDLC 3. IEEE 1540-2001 - Standard for Software Life Cycle Processes-Risk Management 4. IEEE 1016-1998 – Software Design
Testing	<ol style="list-style-type: none"> 1. ISO/IEC 12207 2. ISO/IEC 829-1998
PHI	Adhere to Federal and State privacy standards.
Operational Recovery Plans	<ol style="list-style-type: none"> 1. SAM Chapter 5355.2 'Agency Operational Recovery Plan' - http://sam.dgs.ca.gov/TOC/5300/5355.2.htm 2. http://www.cio.ca.gov/itpolicy/simm.html 3. National Institute of Standards and Technology (NIST) 4. DHCS Health Administrative Manual (HAM) – 'Operational Recovery' CA-MMIS/FI Procurement Data Library/Supporting CA-MMIS Information/References – Standards/DHCSHealthAdminMan_SecurPol.pdf 5. COOP-COG
State Medicaid Manual	http://www.cms.hhs.gov/Manuals/pbm/
State Information Management Manual (SIMM) - Information Technology Policy	http://www.cio.ca.gov/itpolicy/simm.html

Requirement	References
Security - Replacement needs to be in sync with Exhibit A, Attachment II Sections KK & LL	<ol style="list-style-type: none"> 1. DHCS Health Administrative Manual (HAM) - Security Policy - CA-MMIS/FI Procurement Data Library/Supporting CA-MMIS Information/References – Standards/ 2. DHCS Information Technology Security Standards - Information Systems Security Requirements for Projects (ISO/SR1) - CA-MMIS/FI Procurement Data Library/Supporting CA-MMIS Information/References - Standards/SR1 DHCS-ISO Project Requirements v3.2.doc 3. SAM Chapter 5335.1 'Information Integrity and Security' - http://sam.dgs.ca.gov/TOC/5300/5335.1.htm 4. DTS Security Requirements - http://www.servicecatalog.dts.ca.gov/security.asp 5. Security Requirements for Systems Hosted in Managed Care or Customer Managed Environments - CA-MMIS/FI Procurement Data Library/Supporting CA-MMIS Information/References - Standards/DTSSecurityRequirements.pdf 6. HIPAA 7. State Medicaid Manual 8. OMB Circular A-130 9. Federal Information Security Management Act (FISMA) Compliance 10. Applicable International Organization for Standardization (ISO) Standards 11. Sarbanes Oxley 12. California Civil Code Section 1798.29 & 1798.82 13. AB 1298 (California Civil Code Sections 56.06, 1785.11.2, 1798.29, and 1798.82, relating to personal information) 14. DHCS Health Administrative Manual (HAM) – 'System Security' - CA-MMIS/FI Procurement Data Library/Supporting CA-MMIS Information/References - Standards/DHCSHealthAdminMan_SecurPol.pdf 15. National Institute of Standards and Technology (NIST) Standards 16. MEDS & SSA 17. Federal Information Processing Standards (FIPS) Publications
DHCS Information Technology Hardware and Software Standards	CA-MMIS/FI Procurement Data Library/Supporting CA-MMIS Information/References - Standards/DHCS-and-CDPH-2008-Hardware-and-Software-Standards.pdf Contractor shall use DHCS standards for desktop and office automation integration. All application software standards shall reference the California Enterprise Architecture Program (CEAP) and not be limited to .Net internally managed DHCS limitations.
Business Process Management/ Workflow	1. BPEL
Architecture Guidelines	<ol style="list-style-type: none"> 1. California Enterprise Architecture Program (CEAP) - CA-MMIS/FI Procurement Data Library/Supporting CA-MMIS Information/References – Standards/California_SOA_and_IDM_Technical_Vision_1-7-2008.pdf 2. MITA Reference – MITA Framework 2.0 3. California Enterprise Architecture Framework (CEAF)

Requirement	References
Communication & Identity Management Guidelines	<ol style="list-style-type: none"> 1. California SOA and Federated Identity Management CA-MMIS/FI Procurement Data Library/Supporting CA-MMIS Information/References - Standards/California_SOA_and_IDM_Technical_Vision_1-7-2008.pdf 2. Federal Identity Management Guidelines 3. W3C 4. OASIS 5. SAML/Liberty Alliance 6. Web Services Interoperability (WS-1) Organization standards for Basic Profile and Basic Security Profile
CA-MMIS Legacy Naming conventions	Exhibit A., Attachment II, Section II
CMS Certification Standards	See CMS website for MITA Certification Toolkit
Standards to be supported for HIE/HIT	<ol style="list-style-type: none"> 1. Healthcare Information Technology Standards Panel (HITSP) – www.hitsp.org 2. Certification Commission for Healthcare Information Technology (CCHIT) http://www.cchit.org/ 3. National Health Information Network (NHIN) 4. http://www.ohi.ca.gov/calohi/PSAB/tabid/56/Default.aspx 5. Resource Library for HIE - CA-MMIS/FI Procurement Data Library/Supporting CA-MMIS Information/References – Standards/Resource Library for HIE.doc
IEEE Standard for Problem Resolution Process	<ol style="list-style-type: none"> 1. IEEE 12207-2008, Paragraph 6.8
IEEE Standard for Quality Assurance Process	<ol style="list-style-type: none"> 1. IEEE 12207-2008, 2. IEEE 730-2002, Standard for Software Quality Assurance 3. IEEE 1044-1993 (R2002) Standard Classification for Software Anomalies 4. IEEE 1061-1998, Standard for a Software Quality Metrics Methodology
Project Management Enterprise Project Management Office (EPMO)	<ol style="list-style-type: none"> 1. California State CIO (PMO) 2. Project Management Body of Knowledge (PMBOK) 3. PMI Practice Standards
IEEE Standard for Software Project Management Plans (SPMP)	<ol style="list-style-type: none"> 1. IEEE Standard 1058-1998 2. Best Practices for Project Management Office of the State CIO State Integration Division (SID) http://www.bestpractices.osi.ca.gov/

Requirement	References
Project Management Office of the State CIO State Integration Division (SID) Policy on Risk Management	http://www.bestpractices.osi.ca.gov/sysacq/downloads/OSI%20Policy%20on%20Risk%20Management%20(1806_17).PDF

58. Term of the Contract

- A. The Contract term is governed by time intervals. The time intervals when combined together make up the contract term.
- B. The four (4) intervals of the Contract term consist of:
 - 1) Interval I - Takeover: The first interval of the Contract shall begin on Contract Effective Date (CED). The Takeover interval shall be a nine (9) month time period, concluding prior to the Assumption of Operations (AOO). Final deliverables and payments will not be made until after Assumption of Operations starts. Please refer to Exhibit B, Attachment 1, for detailed payment provisions.
 - 2) Interval II - Operations: The second interval of the term of the Contract shall begin nine (9) months after CED with the AOO. The Operations Interval Contract term consists of five (5) phases as follows:
 - a. Phase 1: starts nine (9) months after CED, ends June 30, 2011*
 - b. Phase 2: starts July 1, 2011, ends June 30, 2012
 - c. Phase 3: starts July 1, 2012, ends June 30, 2013
 - d. Phase 4: starts July 1, 2013, ends June 30, 2014
 - e. Phase 5: starts July 1, 2014, ends June 30, 2015

Note: Phase 1 operations can start on any date but will end to coincide with the State fiscal year end.

* If Phase 1 of Operations is less than twelve (12) months, the Contractor's annual bid prices for that Phase will be adjusted accordingly. (i.e., if Phase 1 begins August 1 instead of July 1, the prices bid for that Phase will be adjusted to eleven-twelfths (11/12ths) of the annual bid price.
 - 3) Interval III - Operations Extensions: The third interval of the Contract would begin July 1, 2015, if desired by the Department and may end as late as June 30, 2021, for a possible total Operations Extensions Contract term of seventy-two (72) additional months.
 - a. DHCS may extend the Contract using up to five (5), one (1) year optional Operations Extensions. The optional Operations Extensions interval consists of five (5) possible one (1) year time periods, totaling sixty (60) months:
 - i. Extension Year 1: starts July 1, 2015, ends June 30, 2016

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- ii. Extension Year 2: starts July 1, 2016, ends June 30, 2017
 - iii. Extension Year 3: starts July 1, 2017, ends June 30, 2018
 - iv. Extension Year 4: starts July 1, 2018, ends June 30, 2019
 - v. Extension Year 5: starts July 1, 2019, ends June 30, 2020

If the Contracting Officer chooses to exercise one or more of these extensions, the extension executed could be any combination of consecutive extensions at any one time. E.g., the Contracting Officer may exercise extensions for Time Periods 1 and 2 at the same time, effectively extending the Contract for two (2) years.

- b. **Regardless of whether the Contracting Officer chooses to exercise any of the optional Operations Extension years (listed in 3)a., above), there will be a one-time optional Extended Operations period of the Contract for a time frame of no less than six (6) months, nor more than twelve (12) months.**
- 4) Interval IV - Turnover: The fourth interval of the Contract shall begin prior to the end of Operations, upon written notification from the Contracting Officer, and will end six (6) months following the end of Operations. Except in the case of early termination of the Contract, as provided for in Additional Provision 59, Termination, the earliest possible end date for the Turnover interval is December 31, 2015; and the latest possible end date for the Turnover interval is December 31, 2021. The Turnover interval Contract term that does not overlap with Operations is the last six (6) months.
- C. The baseline Contract agreement will begin with CED and end June 30, 2015, with possible Operations Extensions of up to an additional seventy-two (72) months.
- D. Phase 1 of Interval II - Operations may be less or more than 12 months.
- E. If the Contract term is adjusted due to either of the circumstances listed D. above, the Contracting Officer will adjust the term of Phase II of the Contract. Phase I of Interval II may therefore be more or less than twelve (12) months. Payment for Phase I of Interval II will be apportioned based on the original bid price for the first year divided by twelve (12), and then multiplied by the actual number of months in that Phase. For example:
- The Contractor bid \$1 million (\$1,000,000) for Phase I.
- The Contract is delayed and Phase I of Interval II is adjusted to nine (9) months; the Contractor receives nine-twelfths (9/12) of the price bid for Phase I = \$750,000.
- The Contract is awarded early and Phase I of Interval II is adjusted to 14 months; the Contractor receives fourteen-twelfths (14/12) of the price bid for Phase I, = \$1,166, 667.
- F. The resulting Contract will be of no force or effect until it is signed by both parties and approved by the Department of General Services (DGS), if required. The approval by DGS is accompanied by a date stamp on the State of California Standard Agreement, STD 213; said date stamp becoming the Contract Effective

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- Date (CED). The Contractor is hereby advised not to commence performance until all approvals have been obtained. Should performance commence before all approvals are obtained, said services may be considered to have been volunteered if all approvals are not obtained.
- G. Assumption of Operations is subject to DHCS' acceptance of the Contractor's readiness to perform claims processing functions.
- H. The Contracting Officer shall have the exclusive option to extend the term of the Contractor's operations. The Contracting Officer may extend the Contract up to five times for up to one year each; and may exercise a subsequent one-time extension of not less than six (6) months, up to one 12 months. The turnover period will be adjusted accordingly. The Contractor shall be given at least ninety (90) calendar days' prior written notice if DHCS chooses to extend the Contract.
- I. During any of the extension periods addressed above and during any period of extended operations, the Contractor's responsibilities shall remain the same as are defined in the contract.

59. Termination

A. Immediate Termination for Cause

- 1) DHCS reserves the right to immediately terminate this Contract in whole or in part by providing written notice to the Contractor after the occurrence of any of the following:
 - a. If the Contractor knowingly furnished any statement, representation, warranty or certification in connection with the Request for Proposal of this Contract, which representation is materially false, deceptive, incorrect, or incomplete;
 - b. If the Contractor fails to perform any material requirement of the Contract or defaults in the performance of this contract;
 - c. If DHCS determines satisfactory performance of the Contract is substantially endangered by the action or inaction by Contractor, or can reasonably anticipate such occurrence of default; or
 - d. If the Contractor files for bankruptcy or, if in the judgment of DHCS, the Contractor becomes financially incapable of completing this Contract.
- 2) DHCS shall not be liable for any costs beyond previously approved commitments incurred by the Contractor if termination is for any of the causes stated in paragraphs A.1.a. through A.1.d. In the event DHCS terminates this Contract in full or in part as provided in this clause, DHCS may procure, upon such terms and in such manner as the Contracting Officer may deem appropriate, supplies or services similar to those terminated, and the Contractor shall be liable to DHCS for any excess costs reasonably incurred for such supplies or services.

In addition, the Contractor shall be liable to DHCS for administrative costs incurred by DHCS in procuring such similar supplies or services. The above

costs shall be drawn from the Contractor's credit provided for in Additional Provision 36, Letter of Credit, of this Exhibit. However, the Contractor shall not be liable for any excess costs or administrative costs if the failure to perform the Contract arises out of causes beyond the control and without fault or negligence of the Contractor or any of its subcontractors.

B. Termination for Convenience

DHCS retains the option to terminate this Contract without cause at DHCS's convenience, provided that written notice has been delivered to the Contractor at least ninety (90) calendar days prior to such termination date. If DHCS terminates this Contract at its convenience, the Contractor will be entitled to compensation upon submission of an invoice and proper proof of claim, in that proportion which its services and products were satisfactorily rendered or provided and its expenses necessarily incurred pursuant to this Contract, up to the date of termination (hereinafter referred to as "the termination date"). In such event, at the request of DHCS, the Contractor shall furnish copies of all proposals, specifications, designs, procedures, layouts, copy, and other materials related to the services or deliverables provided under this Contract, whether finished or works in progress on the termination date. The Contractor will not be entitled to reimbursement for any expenses incurred for services and deliverables pursuant to the contract after the termination date, unless the Contractor receives written advance approval from DHCS. Any services or deliverables for which the Contractor is paid which are provided according to the procedures in this paragraph shall become the property of DHCS.

C. Procedures on Termination

After receipt of notification of termination of this contract, and except as otherwise specified by DHCS, the Contractor shall stop work under this Contract on the termination date and to the extent that they relate to the performance of work that is specified in the notice of termination. The Contractor shall do all of the following:

- 1) Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under this Contract that is not terminated;
- 2) Assign to DHCS, effective on the date of termination, in the manner, and to the extent specified by DHCS all of the rights, titles, and interests for the Contractor under the orders and subcontracts terminated, in which case DHCS has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts and reduce any settlement amount determined by the amount paid for such orders or subcontracts;
- 3) Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the State to the extent the State may require. DHCS's approval or ratification shall be in writing and be final for the purposes of this section;
- 4) Upon the effective date of termination of the Contract and the payment by DHCS of all items properly chargeable to DHCS hereunder, transfer, assign, and make

available to DHCS all property and materials belonging to DHCS, all rights and claims to any and all reservations, contracts, and arrangements with subcontractors and make available to DHCS, all written information regarding DHCS's Provider Relation's publications and materials and no extra compensation is to be paid to Contractor for its services in connection with any such transfer or assignment;

- 5) Take such action as may be necessary, or as DHCS may specify, to protect and preserve any property related to this Contract which is in the possession of the Contractor or its subcontractors and in which DHCS has or may acquire an interest.

60. Toxic Testing of Promotional Give-Aways

During the life of the Contract, the Contractor may hold or participate in conferences wherein they distribute promotional or incentive products to prospective subcontractors, medical care providers, and/or Medi-Cal beneficiaries. The Contractor shall require prospective promotional product suppliers to provide certification that products under consideration conform to applicable federal and State standards. The certification shall be accompanied by a report from an accredited laboratory which shows that levels of regulated constituents do not exceed regulatory limits.

The Contractor shall request information about toxic substances in promotional or incentive products before procuring products. If these data are not available, the Contractor shall reject the product(s), or request that the manufacturer or supplier have samples tested by an accredited laboratory using the analytical procedures specified below. If the manufacturer refuses to provide the data requested, or if the data show that the product is not compliant with federal and State laws that regulate toxic substances in products, the Contractor shall reject the product.

Please refer to the Fact Sheet provided by the Department of Toxic Substance Control, located at http://www.dtsc.ca.gov/PublicationsForms/upload/OEA_FS_Promo-Items.pdf, for regulatory information and suggestions on selecting promotional items from manufacturers and suppliers.

61. Travel

In addition to the travel provisions of Exhibit D(F), Provision 2, Travel and Per Diem Reimbursement, and Exhibit G, Travel Reimbursement Information, DHCS may, at its option, obtain airline tickets or other travel arrangements on behalf of the Contractor in lieu of paying the Contractor for travel expenses.

62. Use of Disabled Veteran Business Enterprises (DVBE)

- A. The State Legislature has declared that a fair portion of the total purchases and contracts or subcontracts for property and services for the State be placed with disabled veteran business enterprises.
- B. All DVBE participation attachments, however labeled, completed as a condition of bidding, contracting, or amending a subject agreement, are incorporated herein and made a part of this Agreement by this reference.

- C. Contractor agrees to use the proposed DVBEs, as identified in previously submitted DVBE participation attachments, unless the Contractor submits a written request for substitution of a like or alternate subcontractor. All requests for substitution must be approved by DHCS, in writing, prior to using a substituted subcontractor.
- D. Requests for substitution must be approved by the program funding this Agreement and must include:
 - 1) A written explanation of the reason for the substitution.
 - 2) A written description of the business enterprise that will be substituted, including its DVBE certification status.
 - 3) If applicable, the reason a non-DVBE subcontractor is proposed for use.
 - 4) A written description of the work to be performed by the substituted subcontractor and an identification of the percentage share/dollar amount of the overall Contract that the substituted subcontractor will perform.
- E. If requested by DHCS, Contractor agrees to provide verification, in a form agreed to by DHCS, that DVBE subcontractor participation under this Agreement is in compliance with the goals specified at the time of Contract award or in an applicable amendment.

63. Use of Small Business Subcontractors

- A. All Non-Small Business Subcontractor Preference Request attachments and Small Business Subcontractor/Supplier Acknowledgment attachments, however labeled, completed as a condition of bidding, are incorporated herein and made a part of this Contract by this reference.
- B. Contractor agrees to use each small business subcontractor/supplier, as identified in previously submitted Non-Small Business Subcontractor Preference Request attachments, unless the Contractor submits a written request for substitution of a like or alternate subcontractor. All requests for substitution must be approved by DHCS, in writing (including email or fax), prior to using a proposed substitute subcontractor.
- C. Requests for substitution must be approved by the funding program and must include, at a minimum:
 - 1) An explanation of the reason for the substitution.
 - 2) A written description of the business enterprise that will be substituted, including its small business certification status.
 - 3) If substitution of an alternate small business does not occur, include a written justification and description of the steps taken to try to acquire a new small business and how that portion of the Contract will be fulfilled.

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- 4) A written description of the work to be performed by the substituted subcontractor identified by both task (if applicable) and dollar amount or percentage of the overall Contract that the substituted subcontractor will perform. The substituted business, if approved, must perform a commercially useful function in the Contract pursuant to Title 2, California Code of Regulations §1896.6.
- D. DHCS may consent to the substitution in any of the situations set forth in Public Contract Code Section 4107 of the Subletting and Subcontracting Fair Practices Act.
- E. Prior to the approval of the Contractor's request for the substitution, DHCS shall give notice in writing to the listed subcontractor of Contractor's request to substitute and the reasons for the request to substitute. The notice shall be served by certified or registered mail to the last known address of the subcontractor. The listed subcontractor that has been so notified shall have five (5) State working days after the receipt of the notice to submit written objections to the substitution to the funding program. Failure to file these written objections shall constitute the listed subcontractor's consent to the substitution. If written objections are filed, DHCS shall give notice in writing of at least five (5) State work days to the listed subcontractor of a hearing by DHCS on the Contractor's request for substitution.
- F. Failure of the Contractor to subcontract with the small businesses listed in its bid or proposal to DHCS, or failure to follow applicable substitution rules and regulations may be grounds for the Department of General Services to impose sanctions pursuant to Government Code Section 14842.5 and Title 2, California Code of Regulations § 1896.16. In the event such sanction are to be imposed, the Contractor shall be notified in writing and entitled to a hearing pursuant to Title 2, California Code of Regulations § 1896.18 and § 1896.20.
- G. If requested by DHCS, Contractor agrees to provide documentation/ verification, in a form agreed to by DHCS, that small business subcontractor usage under this Contract complies with the commitments specified during the Contractor selection process.

64. Waiver of Contract Provisions

- A. No covenant, condition, duty, obligation, or undertaking contained in or made a part of the Contract shall be waived except by written agreement of the parties, or by the explicit language found in the Contract. Forbearance or indulgence in any other form or manner by either party in any regard whatsoever shall not constitute a waiver of the covenant, condition, duty, obligation, or undertaking to be kept, performed, or discharged by the party to which the same may apply; and until complete performance or satisfaction is achieved for all such covenants, conditions, duties, obligations and undertakings, the other party shall have the right to invoke any remedy available under the Contract or under law or equity, notwithstanding any such forbearance or indulgence.
- B. Proposed waivers must be initiated by the Contractor in a written Contract Waiver Request signed by the Contractor Representative. A Contract Waiver Request shall contain either:

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- 1) Certified cost and pricing data covering either the costs or cost savings attributable to the requested waiver;
 - 2) A certified statement that this waiver results in neither an increase in cost nor any cost savings; or
 - 3) A certified statement that the costs or cost savings attributable to the change are less than the costs involved in preparing cost and pricing data in response to a change order, where the change order does not exceed \$10,000.
- C. The Contracting Officer's approval of the Contract Waiver Request shall be in the form of a Contract Waiver Letter signed by the Contracting Officer and shall define the scope of the change. The Contracting Officer may require that the Contractor submit full documentation, including certified cost and pricing data, in support of any waiver authorized pursuant to this Provision. If there is a cost or cost savings to the State, that cost or cost savings shall be processed in a change order or utilized as an offset pursuant to Additional Provision 37, Liability for Overpayment. A Waiver shall not exist unless approved by a Contract Waiver Letter.

65. Warranty

A. Coverage

- 1) The Contractor's warranty is applicable to all items included in the Contract. The Contractor's warranty shall cover any failures, omissions, defects, or deficiencies (Warranty Items) discovered or known in any of the project deliverables or services.
- 2) The Contractor will promptly notify DHCS within one (1) state work day of any failures, omissions, defects, or deficiencies as they are discovered or known.
- 3) The Contractor will provide DHCS with written details concerning the Warranty Item within five (5) state work days.
- 4) The Contractor shall collaborate with DHCS to thoroughly test and implement Contractor mitigation and remediation solutions to software defects discovered during any warranty period.
- 5) DHCS will approve all warranty problem resolution items before implementation of corrections to Warranty Items.
- 6) The Contractor's warranty on deferred Warranty Items shall not commence until after formal written acceptance of the deferred Warranty Items.

B. Services Warranty

Notwithstanding inspection and written approval for the acceptance by DHCS or any provision concerning the conclusiveness thereof, Contractor represents and warrants to DHCS that all Services performed under this Contract will, at the time of written DHCS approval, be free from defects in workmanship and conform to the requirements of this Contract.

The Contractor shall immediately correct or reperform Services which are not in compliance with this Contract. If the Contractor is required to correct or reperform, it shall be at no cost to DHCS, and any Services corrected or reperformed by the Contractor shall be subject to this warranty section to the same extent as work initially performed. If the Contractor fails or refuses to correct or reperform, the Contracting Officer may, by Contract or otherwise, correct or replace with equivalent services and charge to the Contractor the cost incurred by DHCS, or make an equitable adjustment in the Contract price.

C. Systems Warranty

Notwithstanding prior acceptance by DHCS of any contractor deliverable, the Contractor shall expressly warrant that during the life of this Contract, the CA-MMIS, and all systems covered by this Contract, including development, modifications and upgrades, shall be properly functioning, and that all documentation shall be current and accurate and in compliance with the terms of the Contract. The Contractor must correct all Warranty Items in the systems and replace incorrect or defective documentation within ten (10) state work days or as agreed, in writing, between the Contracting Officer and the Contractor. Payments withheld during the Replacement System Design, Development and Implementation (DDI) Phases will be released upon written DHCS approval and acceptance that the system meets all requirements. The Contractor will forfeit the payment withholds for failure to meet the requirements by the end of the warranty period. If the Contractor fails to repair an identified Warranty Item within such period, DHCS may, at its sole discretion, act to repair, and the Contractor expressly agrees to reimburse DHCS for all reasonable costs incurred thereby. Warranty Items properly documented before expiration of the warranty shall be covered regardless of such expiration. The Contractor must expressly warrant all contractor-supported hardware and software provided as a part of the CA-MMIS to be defect free, properly functioning, and compliant with the terms of the Contract and/or change order request.

If the System fails to meet performance commitments during the Warranty Period and while the Contractor is providing Fiscal Intermediary services, the Contractor shall modify, reconfigure, upgrade or replace Contractor-provided software or hardware software and equipment at no additional cost to DHCS in order to provide a system solution that complies with such performance standards.

Systems Warranty Period

1) **Legacy CA-MMIS Applications and Components**

The Contractor's warranty shall be for a period of six (6) consecutive months from the date of formal written acceptance and approval by DHCS of the legacy CA-MMIS at the conclusion of the Takeover phase. This six (6) consecutive month warranty period applies to all components comprising the Legacy CA-MMIS. The Contractor's warranty is limited to defects attributable to the Contractor. In the event the Contractor is the same as the prior Contractor (Contract 02-25999), all properly documented defects are covered by this warranty.

2) Replacement CA-MMIS Applications and Components

The Contractor's warranty shall be for a one (1) year contiguous warranty period, to begin upon DHCS's written acceptance and approval of each portion of the Replacement CA-MMIS as implemented. This warranty shall apply to any full or partial implementation of any replacement system component. This one (1) year contiguous warranty period applies to all components comprising the Replacement CA-MMIS. The Replacement CA-MMIS warranty period shall extend through the Turnover phase.